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# THE L A W S RESPECTING LANDLORDS, TENANTS, AND LODGERS,

Laid down in a plain and easy Manner; and in which all  
technical Terms of Law are familiarly explained;

Together with many

## PRACTICAL DIRECTIONS

CONCERNING

LEASES,  
ASSIGNMENTS,  
SURRENDERS,  
AGREEMENTS,

COVENANTS,  
REPAIRS,  
WASTE,  
&c. &c.

Demand and Payment of RENT, DISTRESS, and EJECTMENT;

As collected from the several

REPORTS AND OTHER BOOKS OF AUTHORITY,

Up to the Commencement of the present

HILARY TERM, 1795.

CONTAINING ALSO

DISTINCT TREATISES

ON THE VARIOUS KINDS OF ESTATES,

Particularly ESTATES for LIFE, for YEARS, and

COPYHOLD ESTATES.

WITH AN APPENDIX OF PRECEDENTS,

Comprising a great Variety of the most approved Forms of  
LEASES, ASSIGNMENTS, SURRENDERS, COVENANTS, NOTICES TO  
QUIT, RECEIPTS FOR RENT, AND PRECEDENTS IN DISTRESS.

The Whole interspersed with NOTES and REFERENCES  
adapted to the Use of the Profession.

To which are also added,

CAUTIONS and DIRECTIONS relative to the HIRING and LETTING of  
HOUSES and APARTMENTS; particularly in the Metropolis of London.

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THE SECOND EDITION, ENLARGED AND IMPROVED.

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London:

Printed for W. CLARKE and SON, Portugal-Street, Lincoln's-Inn, 1795.

[Price Two Shillings sewed.]

1609 | 4111



## ADVERTISEMENT

### TO THIS EDITION.

THE very rapid sale of the first impression of the present Treatise, and the favourable reception with which it was received, has induced us to prepare a second edition for the press, before the whole of the work we provisionally promised the Public is entirely completed; we have, however, the satisfaction to inform those who may wish for the subsequent parts of the work, that one division is already gone to the press, and, it is hoped, the remaining parts will be completed, and published in successive order, by the end of the ensuing Trinity Term.

Short as the time allowed us has been, we have not neglected the opportunity which a second revision afforded us of attempting some improvements. We have taken care to introduce all such determinations as have occurred since the first edition went to the press, and have added some others which inadvertently escaped our former attention.—A new head has been allotted to the subject of Agreements, which, though not omitted, was, it has been thought, too superficially treated of in the first edition.—The chapter relative to “Notices to Quit,” has been somewhat enlarged, particularly as referable to lodgers—Some additional observations, as far as relates to our present subject, have been introduced respecting accidental fire—And the Ind. x to the principal matters has been rendered more accurate and particular.—Every part of the Treatise has, in short, undergone a careful revision, and has, we trust, been rendered more perfect and complete than we could hope to make it on its original composition.

The same diligence and attention which has been employed in the present Treatise, we promise to exert throughout the remaining parts of our work, and the subjects we shall select, we hope, will be found such as to meet with general approbation, and form a useful companion to every description of readers.

## P R E F A C E

TO THE  
FIRST EDITION.

**O**F the various branches which compose the present voluminous code of English Laws, no one appears to be of greater importance, or of more general concern than that which relates to **LANDLORDS** and **TENANTS**.—There is scarcely an individual in the nation, however mean or elevated his condition, who is not comprehended within one or other of the numerous objects it embraces: a subject so generally useful ought to be as generally known; but unfortunately for those to whom it more particularly relates, the *private gentleman*, the *farmer*, and the *tradesman*, no treatise has yet successfully united the essential requisites to a work of this kind, namely, to *explain* in the most familiar manner all *technical phrases*; to contain every thing necessary for the information of both *Landlord* and *Tenant*, without the introduction of irrelevant matter; and to bear a price so moderate as to come within the easy purchase of the *artificer* and *peasant*.—To attain these desirable ends are the objects of the present Treatise: we have endeavoured to render ourselves intelligible to every reader, without suffering our language to be loose, or colloquial: we have collected, and methodically arranged, whatever we conceived would be useful to the *general reader*, without intruding on his attention any thing that appeared to relate solely to the *professional practitioner*; and we have compressed our subject within as narrow a compass and as reasonable a price as the variety of our matter would possibly admit of.

But, though we have designed our treatise chiefly for the instruction of the *general reader*, yet we cannot but think that it will be found a most useful companion to the *young practitioner*, who will find interspersed throughout the work, not only all the *recent decisions* concerning *Landlords* and *Tenants*, up to the present time, but also a great variety of *notes* and *observations* inserted at the bottom of each page, purposely for his use: we trust, too, that the *more proficient lawyer* will procure some assistance from our labours—he will be enabled to advise his client with more accuracy than he could by the help of his memory alone, and with more readiness than by referring to a larger work.

The *plan* we have pursued will be seen by a reference to the *Table of Contents*, where, we trust, it will be perceived that our subject has been arranged with sufficient perspicuity, and every thing comprised that can be necessary for the information of those for whose use it is intended.

\* \* \* Should the present volume meet with the public approbation, it is intended to follow up our subject with familiar treatises upon all such other heads and divisions of the Law as more immediately relate to the concerns of *private Gentlemen*, *Farmers*, and *Tradesmen*.

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See the above several Titles in the *Index*.

### *An Explanation of the Contractions made use of in this Work.*

<b>Amb.</b>	<b>Ambler's Reports.</b>	<b>Lit.</b>	<b>Littleton's Tenures.</b>
<b>And.</b>	<b>Anderson's Reports.</b>	<b>Lutw.</b>	<b>Lutwick's Reports.</b>
<b>Atk.</b>	<b>Atkyn's Reports.</b>	<b>Mod.</b>	<b>Modern Reports.</b>
<b>Bac. Ab.</b>	<b>Bacon's Abridgement.</b>	<b>Moor</b>	<b>Moor's Reports.</b>
<b>Black. Com.</b>	<b>Blackstone's Commentaries.</b>	<b>Noy Max.</b>	<b>Noy's Maxims of the Laws of England.</b>
			6th edition.
<b>Bro. or Brow.</b>	<b>Brown's Chancery Cases.</b>	<b>Ow.</b>	<b>Owen's Reports.</b>
<b>Bro. Dist.</b>	<b>Brooke's Distrefs.</b>	<b>P.</b>	<b>Page.</b>
<b>Bur.</b>	<b>Burrow's Reports.</b>	<b>Perk.</b>	<b>Perkins' profitable Book.</b>
<b>Co.</b>	<b>Coke's Reports.</b>	<b>Plow.</b>	<b>Plowden's Commentaries.</b>
<b>Co. Cop.</b>	<b>Coke's Copyholder.</b>		
<b>Co. Lit.</b>	<b>Coke upon Littleton.</b>	<b>P. Wil.</b>	<b>Peere Williams' Reports.</b>
<b>Cow.</b>	<b>Cowper's Reports.</b>	<b>Raym.</b>	<b>Raymond's Reports.</b>
<b>Cro. Eliz.</b>	<b>Croke's Reports in the time of Elizabeth.</b>	<b>Roll. Ab.</b>	<b>Roll's Abridgement.</b>
<b>Cro. Jac.</b>	<b>Croke's Reports in the time of James.</b>	<b>Salk.</b>	<b>Salkeld's Reports.</b>
<b>Doug.</b>	<b>Douglas's Reports.</b>	<b>Show.</b>	<b>Showers' Reports.</b>
<b>Dy. or Dyer.</b>	<b>Dyer's Reports.</b>	<b>Sty.</b>	<b>Styles' Reports.</b>
<b>Dist.</b>	<b>Distrefs.</b>	<b>Term Rep.</b>	<b>Term Reports by Durnford and East.</b>
<b>Gilb.</b>	<b>Gilbert's Reports.</b>	<b>Vaugh.</b>	<b>Vaughan's Reports.</b>
<b>Hob.</b>	<b>Hobart's Reports.</b>	<b>Vent.</b>	<b>Ventris' Reports.</b>
<b>Inst.</b>	<b>Coke's Institutes.</b>	<b>Vez.</b>	<b>Vezey's Reports.</b>
<b>Leo.</b>	<b>Leonard's Reports.</b>	<b>Vid.</b>	<b>Sec.</b>
<b>Lev.</b>	<b>Levinz's Reports.</b>	<b>Wilf.</b>	<b>Wilson's Reports.</b>
<b>Lil. Conv.</b>	<b>Lilly's Conveyancer.</b>	<b>Went.</b>	<b>Wentworth</b>

### E R R A T A.

P. 7 last line—for or lease, read on lease.  
 18 l. 2c—after necessary, insert and.  
 30 in the margin, for surrendrer, read surrendres.  
 31 margin—instead of to him, read by lease.

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THE  
LAW S  
OF  
LANDLORD AND TENANT.

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CHAP. I.

OF ESTATES IN GENERAL.

**A** N *estate* is that *interest* which a person has in lands, or tenements; this by the laws of England may be various: it may be for a certain number of years, months, or days; it may be for a man's own life, or the life of another person; it may determine at his decease, or remain to his descendants after him; or, lastly, it may be absolute and unlimited, being vested in him and his representatives for ever. In technical language, these different estates are denominated as follows: *estates in fee-simple*; and *fee-tail*; which are freeholds of inheritance; *estates for life*; *after possibility of issue extinet*; *by the curtesy*; *in dower*; and *in jointure*; which are estates of freehold, but not of inheritance; *estates for years*; *at will*; and *at sufferance*; which are neither of freehold nor of inheritance; *estates by copy of court-roll*, some of which are, and some are not, of inheritance; *estates in joint-tenancy*; *in common*; and *in coparcenary*; which may be had in any of the preceding estates. Concerning each of these, we shall speak in the

An estate, what.

The various kinds of estates.

order we have enumerated them, being more or less diffuse in our observations, as they may severally appear to have greater or less relation to our subject of *Landlord and Tenant*.

## C H A P. II.

## OF ESTATES OF INHERITANCE;

AND

I. *Of an Estate in Fee-Simple.*

An estate in fee-simple.

In what it may be had.

Its incidents.

**A**N estate in fee-simple is where a man has lands, tenements, or hereditaments, to hold to him and his heirs for ever, (viz. to have the *use* and take the *profits* thereof to him and his heirs, for the *absolute property of the soil* can belong to no *subject*, but always resides in the king). This estate may be had in any kind of hereditaments, corporeal, or incorporeal, as lands, houses, advowsons, tythes, &c. and is the highest and most extensive interest a man can possess in any property. It may be granted and disposed of either by deed or will, at his pleasure; and if he make no disposition of it in his life-time, it will, on his death, descend to his heirs of the whole blood, that is, to his lineal descendants. All the inferior estates of which we shall have occasion to treat in the ensuing pages, are derived out of, and compose a part of this: an estate for life or years, for instance, is only a certain portion of the estate of him who has the *fee*, to whom, on the death of the present possessor, or other determination of his estate, it will revert to be held again in fee-simple. Estates in fee are subject to the dower of the wife, chargeable with debts of record, and may be forfeited for treason. *Co. Lit.* § 1. *Noy Max.* 6th edit. p. 43.

II. *Of*

II. *Of a base, or qualified Fee.*

A base, or qualified fee, is that which has a qualification annexed to it, and which must determine whenever that qualification is at an end; as where Hen. 6. granted to John Talbot, that he and his heirs, *lords of the manor of King-  
ston Lisle*, should be peers of the realm: here J. Talbot had a base, or qualified fee, in that dignity, which determined the instant he or his heirs ceased to be lords of the said manor. This estate is reckoned a fee, because by possibility it may endure for ever; but, as it at the same time depends upon concurrent and collateral circumstances, which debase the purity of the fee, it is called a base, or qualified fee. *Co. Lit. 27. a. 2 Black. Com. 109.*

III. *Of a Conditional Fee.*

A conditional fee was, at the common law, a fee restrained to some particular heirs, exclusive of others, as to the heirs of a man's body, which admitted only his lineal descendants. This estate was nearly extinguished by the stat. 13 Ed. I. c. I. commonly called the statute de donis, which gave rise to the modern estate tail. *Co. Lit. 19. a.*

A fee conditional.

IV. *Of an Estate-Tail.*

An estate-tail may be either general or special; general, where lands and tenements are restrained to the heirs of a man's body generally; special, where they are restrained to some particular heirs of his body, as to the heirs of his body by his wife *Mary*, &c.

The principal incidents to a tenancy in tail are these: *Its incidents.*

1. A tenant in tail may commit *waste* on the estate-tail by felling timber, pulling down houses, or the like, without being liable to account for the same.
2. The wife of a tenant in tail shall have her dower or thirds of the estate-tail.
3. The husband of a female tenant in tail may be tenant by the curtesy of the estate-tail.
4. A tenant

in tail may, by stat. 32 Hen. 8. c. 28, (under certain restrictions there mentioned) grant leases of the estate-tail for the term of 3 lives, or 21 years. 5. An estate-tail may be barred or destroyed by a fine, or a common recovery, or by lineal warranty, descending with assets to the heir, or by committing treason. *Co. Lit.* 19. b. 224. a.

**Observation.**

The reader perceives that we have been exceedingly concise in our remarks on the estates mentioned in this chapter; they have, in truth, been noticed only for the sake of method; for when considered under the particular denominations here enumerated, they in no respect concern the relation between landlord and tenant, both those capacities being then concentrated in the same person; but immediately on their being granted out by their owners to inferior tenants, they become intimately connected with our subject, and will therefore meet with a full discussion under one or other of the ensuing heads.

---

**C H A P. III.****OF ESTATES OF FREEHOLD, BUT NOT  
OF INHERITANCE;****AND****I. *Of an Estate for Life.*****An estate for life,**

**A** N estate for life is where a man has lands or tenements to hold during his own life, or the life of some other person, or for some other uncertain period, which by possibility may continue for life. *Co. Lit.* 41. b.

As this estate under one or other of the above definitions is by far more frequent amongst those for whom we have adapted the present treatise than either of those we have before noticed, we shall be somewhat more particular in our remarks

remarks upon it, and consider briefly, 1. How it may be created. 2. What are its incidents; and, 3. How it may be destroyed.

Estates for life may be created not only by a grant to a person expressly for life, but also by a general grant, without defining or limiting any specific estate, as, if I grant "to Philip Downing my house at Hampstead." This makes him tenant for life; for though it cannot be a fee for want of the word *heirs*, it shall be construed to be as large an estate as the words of the donation will bear, and therefore an estate for life. *Co. Lit.* 42. a.

It may be proper to remark here, that in order to create a valid estate for life, it is material that it be made to commence on the same day upon which it is granted (a); for at common law no estate of freehold can be created without actual possession being given of the thing granted. A lease for life, therefore, to begin at *Michaelmas next*, would be void, for possession cannot be given *now*, of an estate which is not to commence till a *future* period. 5 *Co. 94.*

The incidents to an estate for life are principally the following: A tenant for life has a right to the full use and enjoyment of his estate, and of all profits or advantages which may arise from it, such only excepted as, if taken, would be to the permanent loss of the person entitled to the reversion: he may, therefore, unless restrained by particular covenants, as may also his lessee, or undertenant, take sufficient wood from off the estate for the necessary purposes of *repairs*,

2. Its incidents.  
Tenant for life  
has a right to  
the full enjoy-  
ment of his  
estates.

May take es-  
tates.

(a) To preserve this requisite, some attention is necessary in the wording of a lease for life. If it be made to commence "from the day of the date," (which has too frequently been done) the day on which it is dated will be excluded, and the lease consequently void. *Leit. Rep.* 296. It should therefore be made to commence "from henceforth," "from the making hereof," or the like, which expressions include the day of making. *Co. Lit.* 45. 1 *Wilf.* 176.

It has, however, been held that a lease, under a *power* in a marriage settlement to grant leases in *possession*, and not in *reversion*, is good, though made to begin "from the day of the date." *Doug.* 53. 565. *Corw.* 711. This decision proceeded on the principle of effectuating the intention of the parties, and to substantiate so necessary a provision in marriage settlements.

*firing, and implements of husbandry (a),* without any express assignment thereof in his lease; he has also a right to the pollards, and dotards, and to the plashings of quicks and coppice wood, (but he must be careful to fence in the stocks, so that the growing shoots be not destroyed by cattle,) but he is not at liberty to cut down timber trees, pull down houses, or commit other *waste* (b) upon the premises, for the destruction of such things would tend to impoverish the estate of the reversioner; and they are moreover neither the temporary profits of the land, nor necessary for the complete enjoyment of the estate. *Co. Lit. 53. b. 4 Co. 63. a.*

Must not commit waste.

Not prejudiced by accidents.

Shall therefore have emblems in some cases;

The law will not suffer a tenant for life to be prejudiced by any such sudden or casual determination of his estate as he could not foresee or prevent.

Therefore, if tenant for life sow his land, and die before the corn, &c. be ripe, though his estate be determined, yet shall his executors have the crop and other *emblems* (c); for to sow the land was a public benefit, tending to the increase and plenty of provisions, and ought to have the utmost encouragement. *Noy Max. c. 9.*

And so it is if the estate of tenant for life be determined by the act of law, for “the law worketh not injury.”

Therefore, if an estate be granted to a man and woman during *coverture*, (which would give them a determinable

(a) These perquisites are in law termed *eflowers*, or *botes*, and are principally *house-bote*, *cart-bote*, and *hay-bote*. House-bote means a sufficient allowance of wood for firing, and the repair of the tenement and out-houses. Cart-bote signifies wood for making and repairing carts, ploughs, and other implements of husbandry; and hay-bote, wood for keeping the hedges and other fences in repair.

(b) Concerning waste, see post. chap. iv. § 5.

(c) *Emblems* are not only corn and other grain sown, but also roots planted, and in general, all *annual, artificial profits* of the land; but *fruit trees, grafts*, and the like, are not reckoned emblems, because not planted annually, at the expence and labour of the tenant; but being a *natural and permanent profit* of the earth. 2. *Black. Com. 122.*

estate for life) and they be divorced, still the husband shall have the corn, &c. previously sown, for the sentence of divorce was the act of law. *5 Co. 116.*

But it would be otherwise if the estate were determined by <sup>but not in all.</sup> the wilful act of the parties themselves.

As if tenant for life forfeit his estate by committing waste, granting his estate in fee, &c. in these and similar cases, he shall lose the emblems, and must leave upon the premises whatever may be growing at the time of its determination; and indeed what right can he claim to that which he has voluntarily relinquished? *Co. Lit. 55. a.*

Another incident to estates for life, regards the lessees, or <sup>As to his lessee.</sup> undertenants, to whom the law is equally favourable as to their lessors, the original tenants for life, and in some cases more so, for they are not only entitled to estovers and emblems, as the original tenant for life is, but in some cases where the original tenant shall not have them on account of having determined his estate by his own act, yet his lessee shall, who is a third person, and ought not to be hurt by the default of his lessor. *Ibid. Cro. Eliz. 461.*

As, if a woman hold lands during celibacy, and marry, this being her own act, she shall lose her emblems; but if she have leased her estate to an undertenant, her marriage will not deprive him, because he was a stranger to the act, or if otherwise could not have prevented it. *1 Rot. Ab. 727.*

And until the last reign, a lessee of tenant for life, in case of the death of his lessor, between the quarter-days appointed for rendering his rent, might lawfully quit the premises without paying any since the last quarter-day; but this unreasonable privilege was remedied by *11 Geo. 2. c. 19.* which enacts, that the executors or administrators of tenant for life, shall recover of the lessee a rateable proportion of rent from the last day of payment to the death of the lessor.

Executors, &c.  
may recover rent  
of lessee after  
tenant for life's  
death.

It may here also be observed, that at the common law there was no other mode of recovering rent due from tenant for life than by distress; but now by stat. *8 An. c. 14.* any person having rent in arrear, due, or lease for life or lives,

Action of deb<sup>t</sup>  
may be had for  
rent.

may have action of debt for the same as if due upon lease for years.

3. How an estate for life may be destroyed.

By breach of condition.

By forfeiture.

Tenant for life absent for 7 years, shall be presumed to be dead.

We now proceed to consider the means by which an estate for life may be determined or destroyed.

Though estates for life will, generally speaking, last as long as the life for which they are granted continues, yet there are some estates for life which may determine sooner.

Thus, if a lease be made to a woman during her widowhood, or to a man till he be promoted to a benefice, these estates are absolutely determined on the marriage of the woman, or the man's obtaining a benefice; yet whilst they subsist they are reckoned estates for life, because the term of their continuance being uncertain, they may by possibility last for life, viz. if the contingencies on which they are to determine do not sooner happen (a). 3 Co. 20. 2 Black. Com. 121.

An estate for life will also determine by the commission of any legal act of forfeiture; as by committing waste; granting a greater interest than the tenant is possessed of; or, in short, the doing any act which is inconsistent with the *nature* of this estate; what these are will be more particularly stated hereafter (b).

We shall probably meet with no more convenient place than this to mention, that, "By 29 Car. 2. c. 6. it is enacted, that if tenant for life shall remain beyond sea, or elsewhere absent himself for seven years together, and no sufficient proof be made of his being living, he shall in any action brought by the lesee, or reversioner, be accounted dead." But by the same act it is provided, that, if he afterwards return, or appear to be living, he shall recover the intervening profits of the land with interest for the same.

*Concerning the mode of demanding and recovering rent in arrear, together with such other incidents and properties of an*

(a) A lease for years, executed by tenant for life, is void on his death, though the reversioner be made a party to it, and afterwards execute in order to confirm it. 1 Term Rep. 86.

(b) See chap. iv. § 5, title *Forfeiture*.

estate

*estate for life as it has in common with an estate for years,*  
see post. chap. iv. & viii.

## II. *Of an Estate-Tail, after Possibility of Issue extinct.*

This appellation is given to the estate of one who being tenant in special tail, (that is, to hold to him and his heirs by some particular woman,) the person from whose body the issue was to spring dies without issue, or having issue, such issue becomes extinct. *C. Lit. 27. b.* An estate-tail after possibility of issue extinct.

## III. *An Estate by the Curtesy of England.*

This happens when a man marries a woman seized of an estate of inheritance, and has by her issue born alive and capable of inheriting the estate, and she dies, the husband is then entitled to the estate as tenant by the curtesy of England. To entitle a man to be tenant by the curtesy, the marriage must be legal; the wife must have been actually in possession of the lands, and the issue must be born alive. *2 Black. Com. 145.* An estate by the curtesy of England.

## IV. *Of an Estate in Dower.*

Which is, where a husband being seized of an estate of inheritance dies, leaving his wife surviving. In this case she shall have, during her life, a third part of all lands and tenements of which her husband was so seized at any time during their marriage. A woman will forfeit her dower by aliening the lands assigned to her; by divorce; by elopement; by the treason of her husband; and may bar it by levying a fine, or suffering a recovery during her coverture. *Lit. § 36.* An estate in dower.

## V. *Of an Estate in Jointure.*

A jointure is defined by Sir Edw. Coke to be a competent *Jointure.* livelihood of freehold for the wife, of lands and tenements, to

to take effect in profit or possession immediately on the death of her husband. To constitute a good jointure, it must be for her own life; it must be made to herself and not another, in trust for her; it must be, and so expressed to be, in lieu of dower. If the jointure be settled before marriage, the observance of these requisites will prevent her claiming her dower; but if not till after marriage, she may notwithstanding refuse the jointure, and take her dower at common law. *Co. Lit. 36. b.*

## Observation.

These estates of *tenant in tail after possibility, &c. tenant by the curtesy, in dower, and in jointure*, are equivalent to the estate for life, which we recently spoke of, and partake in general of the same privileges and disabilities as that estate; we shall therefore say nothing farther concerning them at present; particularly as they have but little relation to our general subject, and will occasionally be noticed in some of the subsequent chapters.

## C H A P. IV.

## OF ESTATES LESS THAN FREEHOLD;

AND

I. *Of an Estate for Years.*

An estate for years defined.

**A**N estate for years may be defined to be a contract or agreement between the lessor, (i. e. the person making the lease) and the lessee, (the person to whom it is made); for the possession and profits of lands and tenements on the one side, and a rent or recompence to be paid on the other, for some determinate period. *2 Bac. Ab. Tit. "Leases."* *2 Black. Com. 140.*

Every estate which must necessarily expire at a certain and prefixed period, by whatever words created, is in law construed to be an estate for years; for which reason it is frequently called a *term*, from the Latin word *terminus*, because

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its duration or continuance is bounded and determined; and it is immaterial whether it be for a complete term of a year, or for a longer or shorter period: for if it be but for half a year, or a quarter, or any less time, it is still respected as an estate for years, 2 *Black. Com.* 140. *Lit.* 57. and this is the estate to which we have so frequently referred in the preceding part of our work, and to which, on account of its great frequency, and more especially amongst those for whose information and use our volume is principally designed, we have promised to give our more particular attention. We shall, therefore, consider it in five points of view, and enquire;

1. Who may grant an estate for years, or in other words, who may make a good lease for years.
2. What requisites must be observed in order to make a valid lease.
3. Of covenants, provisoies, clauses, and agreements in leases for years.
4. The interest a lessee for years has in the premises demised to him; with some other miscellaneous incidents to this estate.
5. By what means an estate for years may be barred or determined; and,
6. Of the nature and effect of agreements, whether for leases or other demise of premises.

*And first, concerning who may grant an Estate for Years.*

It may be said in general, that all persons seized in fee-simple, fee-tail, for term of life or years, of lands or tenements, may grant leases thereof for any term less than their own respective interests. (a).

Who may grant leases.

Tenant in fee-simple having an absolute and unlimited interest in his estate, may consequently grant leases of all or any part thereof, for life or years, or otherwise, at his pleasure, without limitation or restraint.

Tenants in fee.

(a) It is not here meant that they are restrained from granting their *whole* interest; only in that case the conveyance loses the name of *lease*, and is denominated an *assignment*.

## Tenants in tail.

Tenant in tail, by stat. 32 Hen. 8. may, as before observed, grant leases of his estate-tail for 3 lives or 21 years, to commence from the making, or some short time after, and be of lands or tenements usually let to farm for 21 years past, and so that the accustomed yearly rent paid within that period be reserved; the intent of which statute is, that the tenant in possession may not incur any or diminish the value of the estate to the reversioner.

Tenants for life,  
&c.

Tenants for life, by the curtesy, and in dower, may grant leases of their estate, for their own lives, or the life of the person on whose death their estate will determine, but no longer; which restriction is for a similar intent to that last mentioned.

Husbands in  
right of their  
wives.

Husbands seized of lands, &c. in right of their wives, are authorized by the same stat. of 32 Hen. 8. to make leases thereof for any term not exceeding 21 years, or three lives in being, to commence from the making (a), in which, however, the wife must join, and the same requisites be observed, and for similar reasons, as in leases made by tenant in tail. *C. Lit.* 45. b.

Joint-tenants,  
tenants in com-  
mon, and co-  
parcenary.

Joint-tenants, tenants in common and in coparcenary, may make leases for life or years, or at will, of their own respective parts, which, at their death, will bind their companions. *Wood Inst.* 267.

Executors and  
administrators.

Executors and administrators having terms for years vested in them, in right of their testators or intestates, may make leases thereof for any shorter period than their whole term (b), and the rent reserved will be assets in their hands, and go in a course of administration. 6 *Co. 63* b.

Ecclesiastical  
persons.

Ecclesiastical persons and eleemosynary corporations, may also by the aforesaid stat. 32 Hen. 8. make leases

(a) It has been determined, that though the directions of the statute are not strictly complied with in these respects, the demise is not absolutely void, but voidable only by the entry of the remainder-man. *Doug.* 53.—See also p. 5. n. (a).

(b) See p. 11. n. (a).

under the following restrictions, viz. they must not exceed 21 years, or 3 lives, from the making (a). The accustomed rent must be reserved, and the old lease, if one in being, must be within 3 years of expiring; and leases so made shall bind their successors.

Guardians of infants, (whether appointed by law, or by will, or chosen by the infant himself), may make leases of the infants' lands for any number of years which will not extend beyond the term of his minority (b). *Co. Lit.* 88. *Vaugh.* 18. 179.

Having seen who may, it will be proper for us to consider *Who not.* shortly who may not grant leases.

The restrictions under which tenants in tail, ecclesiastical persons, and husbands in right of their wives, are permitted to grant them, have already been stated. Tenants in tail.  
&c.

And it may here be added, that mortgagors cannot grant leases of the lands, &c. which they have mortgaged, but subject to the mortgage (c), unless the mortgagee be made privy to it. *Doug.* 21. Mortgagors.

Infants also are disabled from making leases of their estates so as to bind them when they come of age (d); lest from ignorance, or by the arts of designing men, they

(a) But a lease by a corporation aggregate, though not conformable to the statutes, will be valid as long as the person lives who was at the head of the corporation when it was made. *Co. Lit.* 45. a. *Bac. Ab.* "Leases."

(b) Though the leases be made to continue beyond the infant's minority, they are not absolutely void, but voidable only at the infant's option. *Cro. Jac.* 55. 98.—These leases may be made in the guardian's own name.

(c) If there be tenant from year to year, and the landlord mortgage the premises during the year, the tenant must have six months notice from the mortgagee. *Doug.* 21.

(d) But by the custom of some places, infants' may grant leases at the age of 15 years, which shall bind them after they become of age. *Co. Lit.* 45.—Respecting deeds made by infants, where absolutely void, and where voidable only, see 4 *Bur. par.* 3. p. 1794. 1806.

should

should be led to demise their estates for less than their real value, (except, indeed, in the case of the king, who in law is never deemed to want discretion.) *Dy. 209.*

2.  
Requisites for  
a good lease.

Must be in  
writing.

2. *The Requisites to constitute a valid Lease  
for Years (a).*

It seems to be needless to say that in order to make a good lease, there must be a *lessor* who is by law enabled to grant the *lease*—a *lesee* capable of taking the thing leased (b)—and a sufficient description of the estate demised. After which the first requisite to the validity of a lease, and indeed of any other deed, is, that the parties be perfectly free from restraint; for if it be made or accepted from compulsion, as for fear of imprisonment or the like, it will be void. *2 Black. Com. 292.*

It is also necessary that the lease be made in writing, and not by parol; for, by stat. 29 Car. 2. c. 3. made for the prevention of frauds, it is enacted, that “all leases, interests of freeholds, or *terms for years*, of any uncertain interests, of, in, to, or out of any messuages, lands, tenements, &c. not put into writing and signed by the parties creating or making the same, shall have the force and effect of estates at will (c) only, and shall not, either at law, or in equity, be taken to have any greater effect; except only leases not exceeding 3 years from the making, whereupon the rent reserved shall be at least two thirds of the improved value.”

(a) See the proper form, &c. of a lease for years, *Appendix*, No. II.

(b) An alien artificer is by 32 Hen. 8. c. 16. disabled from taking a lease of any house or shop in England. See post. p. 15.

(c) Therefore, a parol agreement to demise lands for 4 years, creates no greater estate than at will. *4 Term Rep. 680.* But though a parol agreement is void as to the duration of the demise, yet it is good in respect of the terms of the agreement in other respects, as the rent reserved, the time of the year when the tenant is to quit, &c. *5 Term Rep. 472.*

But

But though leases exceeding the term of 3 years must be in writing, no particular form of words is necessary to constitute a good lease; for as a lease for years (as we before observed) is no other than a contract for the possession and profits of land on the one side, and a recompence to be paid on the other, any words that are sufficient to prove such contract, will in law amount to a lease: so if one covenants with another that he shall hold premises for such a time, this is a good lease; for there are sufficient words to prove an agreement that the one shall quit, and the other take possession of the land. *Cro. Eliz. 173.*  
*1 Co. 129. 11 Mod. 42. 12 Ibid. 610. 5 Term. Rep. 163.*

In order that a lease may be valid, it is fit too that it be made to one born within the three kingdoms of England, Scotland, or Ireland, or be naturalized therein; for by 32 Hen. 8. c. 16. all leases of any dwelling *house* or *shop* made to any stranger, artificer or handicraft-man born abroad, not being a denizen, shall be void (*a*). Both the lessor and lessee are also by the same statute subject to a penalty of 5 l. This statute, however unjust or impolitic, still remains unrepealed, though, in honour to the courts, it has always been construed with great strictness. *2 Show. 135. 1 Saunl. 7. 3 Mod. 94.*

Made to a subject of the realm.

And it is said by lord Coke, that leases for years to an alien, of *lands, meadows, &c.* are forfeitable to the king on office found, (*i. e.* on his being found to be an alien) but not before. *Co. Litt. 2. b.*—It has been held, however, that an alien *merchant* may take a house for his own residence, but it shall not go to his executors. The reasons given for these laws (besides the general policy that foreigners may

(*a*) On this statute it has been determined that even an action for *use and occupation* will not lie if the tenancy be under the colour of a *lease*, for this would be to evade the statute; but if it be by *parol*, such an action may be maintained. *2 Show. 135.*

And in an action brought against an *administrator* of an alien, the statute may be pleaded in bar. *Ibid.*

not

not get too much footing in the kingdom) is, that they may be punished for their presumption in attempting to acquire landed property in the king's dominions. 1 *Black. Com.* 372.

Must be read.

It is also requisite that leases be read by or to the parties, if they require it, otherwise it may be vacated; as it may also, if it be read falsely in order to deceive. 2 *Co. 3, 11. Ib. 27.*

As to its commencement and determination.

We have seen that a lease for life must commence on the very day upon which it is made; but this is not necessary in a lease for years, for as no corporal possession at common law need be given of this estate, as of an estate for life, it may begin at any future period that shall be agreed upon between the parties (a).

In a lease for years the time when the term is to begin, and when it is to end, must be certain and determinate, or at least such as by reference to something else may be reduced to a certainty; otherwise the lease will be void: therefore a lease for so many years as such a one shall live, would be void; but a lease for so many years as such a one shall name, is good, because though it is at present uncertain how long the estate will continue, yet it will be reduced to a certainty as soon as the term is named. *Noy Max.* p. 86. *Co. Litt* 45.—And the term must be named during the lives of the lessor and lessee, or it will not be good, 1 *Co. 156.* a. for it is essential that there be both lessor and lessee living at the time the lease is made. 3 *Bur. 429.* (b).

(a) It should be observed, however, that until the commencement of the term, and entry be made by the lessee, no legal possession is vested in him by his lease, but only a *right* of possession; he cannot therefore bring an action of trespass before entry. *Co. Lit. 46.* 1 *Mod. 262.*

(b) If no time is mentioned in the lease at which it is to begin, it will commence on the day it bears date; and if the date happen to be omitted, it will commence on the day it is executed. *Co. Lit. 46. b.* and see *Stiles*, 118,

A lease

A lease may be dated as far back as the parties choose, but it cannot bear date on a day subsequent to its execution.

It is still further necessary, in order to the validity of a lease, that it be *signed and sealed* by the parties (a). Lease must be signed and sealed;

The last thing requisite is, that the lease be *delivered* and delivered, either by the lessor himself, or by his attorney, in the presence of one or more witnesses; the form of doing which usually is for the party to place his pen upon the seal, after having put his signature to it, and say, "I deliver this as my act and deed;" any words however, importing as much, will be equally good—and it is proper for the preservation of their testimony, though not strictly necessary, that the witnesses should make a memorandum of the due execution (b).

A writing will amount to no more than an *agreement for a lease*, though containing words of *present contract*, and an agreement that the lessee shall take immediate possession, if reference be made to a lease to be granted in future (c). *1 Term Rep. 735. 2 Ibid. 739.*—But otherwise, if no future lease be referred to. *2 Black. Rep. 973.*

### 3. Of Covenants, Provisoes, Clauses, and Agreements in Leases for Years.

A *covenant* in a deed is an agreement, consent, or promise that something is already done, or not done, or that something shall be done, or shall not be done hereafter. *Plow. 308.*

(a) Though a lease ought properly to be signed by *both* parties, yet it will be good if signed only by the *lessor*, provided the lessee accept of it. But if it be signed by the *lessee* only, it will operate nothing. *Ow. 100.*

(b) As in *Appendix*, No. II.

(c) If, however, the parties expressly intended it for a lease, it will be construed to be one. *2 Black. Rep. 973.*

Proviso, what.

A *proviso* is a condition inserted in a deed or writing, upon the observance of which the validity of the deed depends. It differs from a covenant in this, that a *proviso* is in the words of both parties; a covenant in the words of the covenantor only. Covenants are either express or implied. *Express Covenants* are such as are expressly mentioned in the deed; as a covenant that the lessee shall keep the demised premises in repair: *implied*, where the thing to be done or to be omitted is not expressly provided for in the deed, but inferred by law from the nature of the contract; as, if a lease for years be made by the words *demise* or *grant*, without any covenant for quiet enjoyment. In this case, as well as many others, the *law implies* a covenant on the part of the lessor, that he shall permit the lessee quietly to enjoy the thing demised. (a).

The person who makes the covenant is in law termed the *covenantor*, and he with whom it is made the *covenantee*.

In leases the necessary usual covenants are,

*From the landlord*—

To quiet enjoyment;  
To save harmless from all persons claiming title;  
For further assurance.

*From the tenant*—

To pay the rent and taxes;  
To repair.

These and others, with some practical observations upon them, will be found *Appendix*, No. II.

Respecting covenants; &c. in leases, the following are the principal determinations that have at present occurred:

(a) But where there is an *express* covenant, that the lessee shall enjoy the lands demised, without molestation by the lessor or any claiming under him, the *implied* covenant will be controlled within the limits of the *express* covenant. 4 Co. 80.—This furnishes us with a useful caution not to introduce into leases any more *particular* covenants than the case may absolutely require, lest the general or implied covenants should be thereby rendered ineffectual.

Any

Any thing under seal which imports an agreement will amount to a covenant, as will also a proviso; and actions may be brought upon them as such. *1 Lev. 155.*

Where it was covenanted in a lease, that the tenant should pay all taxes *except land-tax*, it was held that this exception extended only to the old land-tax, and did not excuse him from paying additional land-tax, occasioned by an improvement of the estate: *3 Term Rep. 377.*

And in a case where a lessee for 21 years, having covenanted to repair and to pay all taxes and *impositions*, assigned his term for a small consideration, it was adjudged that he was not liable to pay the expence of a party-wall, either by the covenant, or by stat. 14. *Geo. 2.* c. 48. but that it must be borne by the original landlord. *3. Term Rep. 458.*

It has been held that a condition of re-entry by the lessor, in case the lessee became a bankrupt, was valid. *2 Term Rep. 133.*

Where there was a lease for 61 years, and a covenant that the lessor would at any time, within one year after the expiration of the first 20 years, grant a further term of 61 years, to commence from the determination of the term of 61 years first granted, and so in *like manner* at the end of every 20 years during the said term; it was held that the lessee could not claim the additional term of 61 years at the expiration of the last 20 years of the term, if he had neglected to claim it before (a). *1 Term Rep. 229.* Further term.

A covenant in a lease for lives, to renew on the death of every life, under the same rent and covenants, shall be taken to be a perpetual covenant of renewal (b). *Coupl. 819.*

Where a tenant for life had a power to grant leases for years of his estate, so that such leases contained only the

"Usual covenants."

(a) This case turned on the particular wording of the covenant, and the apparent intention of the parties.

(b) It was however observed by the court, that this was a hard case for the lessor; but as there had been four successive renewals, he was conceived to have put his *own* construction upon the covenant.

usual covenants, and he made a lease thereof, with a proviso, that if the premises should be destroyed by tempest or fire, the lessor should rebuild, and on failure the rent should cease: the lease was held to be void on the jury's finding that such a proviso was *unusual*. 1 *Term Rep.* 705.

Exception against fire.

A covenant to pay rent and to repair, "casualties by fire excepted," does not extend to the payment of rent, but only to repairs; and the lessee must continue to pay rent during his term, though the premises be burnt down, and the lessor refuse to rebuild (a). *Ibid.* 310.

A covenant to pay rent at a certain quarter-day, or within so many days after, is held not to be broken till the expiration of *extra* days. 2 *Show.* 77.

Lease under a power.

A lease of tythes under a power to grant leases of *all or any part of the premises*, reserving the *usual* rent, was held to be void, because the tythes had not been usually letten, and consequently no *usual* rent could be reserved. 3 *Term Rep.* 366.

Under lease.

A proviso for making void a lease, if the lessee, his executors, administrators or assigns, should *set, let, or assign* without leave of the lessor, was held to extend to an under-lease granted by the administrator of the lessee. 2 *Ibid.* 425.

But a covenant that a lessee shall not *assign or set over* the lease or the demised premises, does not extend to an

(a) An exception, so worded as to guard against a misfortune of this sort, is inserted in *Appendix*, No. II. *Prec.* 1.

It may be useful to insert here an observation on two relative to accidental fire, as far as concerns landlords and tenants. The 6 Ann. c. 31. at first only temporary but now perpetual, enacts, that no action shall lie against *any person* in whose house any fire shall accidentally begin—with a proviso, however, that the act shall not affect any agreement between landlord and tenant. A tenant therefore will not be liable, unless by *special agreement*; and it has with some reason been doubted whether a covenant to repair *generally* will amount to such an agreement, and extend to the case of fire; on this account, if it is not intended that the tenant shall be answerable for damages by fire, it is proper and usual in leases to make an *exception* as to accidental fire in the covenant to repair.

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under-lease; nor is an *under-lease* in any case considered as an *assignment* (a). 2 Black. Rep. 766. Doug. 56. 184.

Where a lessor covenants with the lessee to keep the <sup>Repairs.</sup> premises demised in repair, and neglects to do it, the lessee may repair, and retain the cost out of his rent (b). Co. Lit. 54.

If a lessee unconditionally covenant to pay rent, an action will lie upon the covenant, even though the lessor prevent his enjoying the premises; because, when a man charges himself by his own express contract, he is bound to abide by it if practicable, notwithstanding the default of others. 2 Stra. 763.

And so if he covenant to repair, and the house, &c. be consumed by lightning or the king's enemies, he is nevertheless liable. Dy. 33. 2. Show. 401.

Where a person having the reversion of a term for years <sup>Merger.</sup> accepts a release, by which the reversion is merged, the covenants incident to it will merge likewise. 3 Term Rep. 393.

A covenant was entered into to employ a ship, as soon as *condemnation should have passed*; this means a *legal* condemnation by a court having jurisdiction. 1 Term Rep. 674.

When a covenant is merely negative and passive, some <sup>Construction of covenants.</sup> act must be done to constitute a breach; therefore, where A covenanted to permit B to sow clover amongst barley, to be sown by him (A), and A sowed in the last year without giving notice to B, it was held to be no breach. Doug. 125.

*As to such covenants in a lease as run with the land, and bind assignees, and such as do not, see title Assignment, p. 26.*

(a) The difference between an *under-lease* and an *assignment* is, that in an *under-lease*, a part only of the term is granted, whereas in an *assignment* the whole is made over.

(b) This however was doubted by Holt, C. J. 1 Leon. 237.

4. *Concerning the Interest a Lessee for Years has in the Premises demised to him; and other miscellaneous Incidents to an Estate for Years.*

Lessee for years has a right to estovers.

Besides the interest expressly given to a tenant by his lease, a tenant for years has the same right to estovers, or botes, as we before observed, that a tenant for life was entitled to, viz. wood for repairs and firing, for making instruments of husbandry, and for hedging and fencing: these are incident to and inseparable from his estate, and may be taken without any assignment or consent of the lessor, unless by express agreement to the contrary. *Co. Lit. 45.*

But not to emblements.

A tenant for life, we have seen, may carry away, after the expiration of his term by the death or default of the lessor, the emblements, or growing profits of the land; and this, we remarked, was for the encouragement of husbandry, and because it would be unjust that one person should be injured by another's default: but it is otherwise with regard to a tenant for a *certain* term of years; for the reason does not hold good as to him; as, for instance, if a person hold from Midsummer for 10 years, and sow a crop of corn, which is not cut at the expiration of his term, he cannot afterwards return to cut it; for, knowing the time when his interest in the premises determined, it was his own fault to sow corn which he knew he could not reap: it is therefore proper, when this is likely to happen, to insert a clause in the lease (a) empowering the lessee to enter upon the land to cut and carry away the produce which may be growing upon the land when his term expires. *Lit. 568.*

Unless in particular cases.

But where the determination of an estate for years depends upon an uncertainty, as when the lessor is only tenant for life, then the estate not being to determine at a time *certain*, as in the last case, but by the act of God, the tenant for years or his executors shall have the emblements, in the same manner as a tenant for life or his execu-

(a) As in Appendix, No. II. Prec. 2.

tors

tors would, unless indeed the estate be determined by the tenant's own default, as by forfeiture, &c. when they shall go to the landlord as before. *Co. Lit. 56. 1 Term Rep. C. B. 5. 2 Black. Com. 144.*

A tenant for years or otherwise, has only a special or partial interest in trees growing upon the land demised to him; this interest consists in the shade they afford his cattle; the fruit they produce; and loppings for repairs, firing, &c.: if, therefore, they are blown down, or otherwise severed from the soil, they become the property of the landlord as part of the inheritance. *4 Co. 62. Noy Max. p. 88.*

Tenant has only a special interest in timber.

It is a general rule in law, that whatever is fixed to the soil or premises, so as to become a part thereof, cannot be removed, and will at the expiration of the lease belong to the lessor: but it has been held, that a tenant may remove what he has affixed for the convenience of his business; and also chimney-pieces and wainscot put up by himself; provided, however, he do it during the continuance of his term, for if he let them remain till his term is ended, he cannot remove them without committing trespass. *1 Term Rep. C. B. 258.*

Cannot remove fixtures.

Notwithstanding an exception in a lease of certain closes, or rooms, which the lessee is not to use, he may pass and repass through them, if they are so situated as that he cannot otherwise have the complete enjoyment of the lands or premises demised to him. *11 Co. 52. a.*

Exceptions in lease.

The estate of a lessee is not determined by the loss of the lease, so that the existence of the term can be proved; for the estate is derived from the lessor, and not from the lease, otherwise than as it shews the intention of the parties, which is not altered by the loss of the deed. *3 Term Rep. 151.*

Estate not determined by loss of the deed.

A lessor may enter upon the premises of his lessee to see the state of the repairs, though there be no covenant for that purpose, such liberty being allowed by law for the general benefit of the lessor's estate. *Co. Lit. 54.*

Privilege of lessor.

But he cannot enter upon them in order to fell timber, work mines or the like, without an express covenant allowing him to do so, for *particular* advantages belonging to *some* lessors only, not to all, must be provided for by particular agreement. *Co. Lit.* 54.

If the lessor in granting a lease of a house, except two rooms and free passage to the same, an action of covenant will lie against an assignee of the lessee for interrupting the passage (a). *Salk.* 196.

A lease was granted of premises described to be late in the occupation of *A*, part of these was a yard; and it was a question, whether, agreeably to the rule of law, that a grant of land extends to all that is immediately above or beneath it, passed a cellar under the yard in the occupation of another person; and it was held not, because contrary to the intention of the parties, and to justice. 1, *Term Rep.* 701.

**Appurtenances.**

If a lease be granted of a house "and the appurtenances," the outhouses, orchard, garden, and yard will pass, but not other land. *Plow.* 70.

**Continuance of lease.**

A lease from year to year, during the pleasure of the parties, will, after entry, subsist until half a year's notice to quit be given by one of the parties; and if the tenant die intestate, his administrator will have the same interest in the premises as he had. 3 *Term Rep.* 13.

And it has been determined, that where a lease was made for 3, 6 or 9 years, at the option of either party, it was to be considered as a lease for 9 years determinable on notice. *Ibid.* 377.

And that a lease for one year, and so from year to year as long as both parties shall agree, is held to be good for two years certain, and afterwards the premises are held at will. *Co. Lit.* 45. b.

(a) Where a person let his house to another ready furnished, and the furniture was taken in execution for a debt of the tenant, it was held that lessor could not have an action of *trespass* against the sheriff, but he might have an action of trover. 4 *Term Rep.* 489.

Also

Also if a lease be made for 21 years, with a covenant from the lessor that the lessee shall have the same for 21 years more after the expiration of the said term, and so from 21 years to 21 years, until ninety-nine years from *thence* next ensuing shall be completed: the ninety-nine years are to be computed from the end of the first 21 years. 2 *Show.* 31.

If a lessee assign over his term, the lessor is not obliged to accept of the assignee for his tenant, but may still resort to his lessee; if, however, he receive rent of the assignee, knowing of the assignment, he has determined his election, and shall not afterwards have an action of debt against the lessee for rent due after the assignment; though it has been held that he may nevertheless maintain an action on the lessee's covenant, that being a personal engagement, which is not waived by the assignment. *Noy Max.* 91.

Lessor need not accept assignee.

5. *By what means an Estate for Years may be parted with, or determined.*

How lease may be determined.

An estate for years or for life may be parted with or destroyed,

By Assignment;

By Surrender;

By Forfeiture,

for waste,

for alienation contrary to law.

*And first of an Assignment.*

An assignment is a transfer or making over to another of <sup>1.</sup> *By assignment.* the right or interest a person has in *any* estate, but it is more usually applied to an estate for life or years (a). 2 *Black.* *Com.* 326.

The parties to an assignment are the *assignor* and the *assignee*; the assignor is he that assigns, and the assignee he to whom the assignment is made.

In order to constitute an effectual assignment, the *whole* term of the assignor must be made over, for if a part only

What necessary to make a good assignment.

(a) See the usual form of an assignment, *Appendix*, No. III.

of

of it be transferred, it is not properly an assignment but an *under-lease* (a), the difference of which is, that in an *assignment* the assignee stands in the shoes of the assignor, and is, generally speaking (b), answerable for all the covenants which he was bound to perform; whereas an *under-lessee* is tenant to his immediate lessor only, and has nothing to do with the terms of the original lease. 1 *Mod.* 268.

Must be in writing.

An assignment must also, like a lease, be put into writing: this was not necessary at common law, but by the Statute of Frauds, 29. Car. 2. c. 3. it is provided that no leases, estates or interests, &c. shall be *assigned*, granted or surrendered, unless it be by deed or note in *writing* (c) signed by the party assigning, &c. or his agent, or by operation of law.

But no particular form of words is necessary to make it valid, so that it clearly express the intention of the parties.

No consideration necessary.

Nor need any consideration be expressed in an assignment, for the assignee's being subject to the payment of the rent reserved in the lease is held to be a sufficient consideration. *Noy Max.* p. 92.

If defective, shall be an *under-lease*.

If from any defect in an assignment, it cannot be good *as such*; it shall, against the party assigning, be good as an *under-lease*. 1 *Doug.* 188.

Who are assignees in law.

Executors and administrators are assignees in law, and are therefore liable to perform all such covenants of their testators or intestates, being lessees, as run with the land,

(a) If the term made over be but for a day less than the whole term, it will not amount to an assignment. *Doug.* 174.

On the contrary, if the whole term be made over, it will be construed to be an assignment, though the rent, and a power of re-entry, be reserved to the *lessee*, and though new covenants be introduced in the assignment. *Ibid.* 185.

(b) The legal distinction is, that an assignee is bound by such covenants only as *run with the land*. Vide p. 27.

(c) Under this clause it has been determined, that an assignment may be made by a mere memorandum in writing, signed by the party, without being either stamped, or sealed or delivered. 1 *Wilf.* 27.

though

though he covenanted for himself and *assigns* only, and not *executors and administrators*. 5 Co. 24. 1. Show. 348.

As we have said that assignees are in general liable to perform the covenants of the lessee, it will be proper to enquire more particularly in what cases this rule holds, and in what not. The general rule is, that an assignee will be liable for the breach of all such covenants as, in the legal phrase, *run with the land* (a), but not for such as are *collateral* to it. It will be proper, therefore, to consider what sort of covenants *do* and what *do not* run with the land, so as to bind the assignee.

Covenants of  
lessee binding  
assignee.

Those covenants are held to run with the land which extend and relate to things in being at the time of the demise, and are part of the grant, as covenants to repair, to pay rent, &c. (b) such covenants being, as it were, inherent to the land, will go along with it, and bind the assignee *though not named*: but when a covenant relates to something not in being at the time of the demise, or something merely personal, or to what is *collateral* to the thing demised, as to pay a sum of money in gross or the like, it does not run with the land, and assignees are not bound, even though *expressly named* (c); but the covenantor only, his executors and administrators. 5 Co. 16. b. Noy Max. c. 41. and vid.

What covenants  
run with the  
land, and what  
not.

1 Show. 199.

Thus where lessee for years covenants duly to pay the rent, to keep the premises demised to him in tenantable repair during his term, not to commit waste, &c. and then assigns, the assignee, and all claiming under him, shall be

(a) In covenants which run with the land, evidence that the defendant is in as *heir* will support a declaration charging him as *assignee*.  
4 Term Rep. 75.

(b) Covenants that the grantor is *seized in fee*; has a *right to convey*; for *quiet enjoyment*; and *further assurance*, also run with the land, because they concern the title of the thing granted or demised.

(c) Yet if the covenant regard something to be done *upon the land*, and the *assignee be named*, though it were not in being at the time of the demise, and be in some measure collateral, as to build a new house upon the land, &c. it shall bind the assignee, because he will receive the benefit of it. 5 Co. 16. b.

bound,

bound, because these things concern and are appurtenant to the thing demised, and therefore run with the land. *Cro. Eliz. 457.*

But where lessee of premises covenanted for himself and his assigns to pay 40*s.* a year to the church-wardens of the parish for certain purposes, his assignee was not bound to pay it, it being a mere personal contract of the covenantor's, and irrelevant to the thing demised (a). *Cro. Jac. 438.*

**Assignee not liable for covenants broken before assignment.**

An assignee is not bound by a covenant entered into by the assignor, and broken *before* the assignment; as where lessee covenanted for himself and his assigns to rebuild a house before such a time, but neglected to do it and assigned his term, it was adjudged that the assignee was not bound to rebuild. *3 Bur. 1271.* *1 Black. Rep. 351.*

**Nor after he has assigned over.**

Nor is an assignee liable for the breach of any covenant after he has assigned over his term. *1 Freem. 336.* *Noy Max. 91.* Therefore an action of covenant will not lie against an assignee for rent due after his assignment over to another, although made without notice to the lessor. *1 Show. 340.*

**Assignees of assignees, &c. liable.**

The assignee of an assignee, and of executors and administrators, as also the executors of an assignee, are all comprehended under the word "assigns," and therefore bound when *they* are bound (b). *5 Cro. 17. b.* *1 Salk. 309.*

In an absolute indefeasible assignment, the assignee is liable even before he take possession. *Doug. 461.* The rent, &c. being due by the contract, and not by the deed.

(a) Covenants in a lease for payment of rent, and doing of repairs, entered into by a lessee with a mortgagor, his executors, administrators and assigns, were held not to run with the land so as to enable the assignee of the mortgagee to maintain an action for the breach of them, though the mortgagor joined in the lease. *3 Term Rep. 393. 678.*

(b) But where lessee covenanted that he, his executors, or administrators, would not assign, and became a bankrupt, it was held that the assignees under the commission would not be bound, provided they made a *fair* assignment. *Ambler 480.*

But

But a mortgagee is not, though the mortgage be forfeited, until he take actual possession; for only *substantial* assignees in the actual or potential enjoyment of the estate are liable to actions in respect of their estate; whereas a mortgagee is but a *nominal* assignee as it were, with a naked right. *Doug. 455.*

But not a mort-  
gagee.

If a lessee grant or assign part of his estate, yet the entire privity of action remains for the whole rent against the first lessee. *1 Cro. 633.*—But an assignee of a part of the estate, is not liable for the rent of the whole. *Doug. 186.*

Where there was an exception in a lease, of an entry and liberty to wash in the kitchen, and a passage for that purpose, it was held, that an action would lie against an assignee for hindering the lessee. *1 Show. 388.*

In an assignment of a lease, it will be proper to insert the following covenants. Proper cove-  
nants in an  
assignment.

*From the assignor—*

That the indenture of lease is good in law.

That the assignor has power to assign.

To save the assignee from former rents, grants, and incumbrances.

For the delivery of deeds and evidences;

That the assignee shall quietly enjoy.

*From the assignee—*

That he will pay the rent;

That he will perform the covenants in the lease; or save the assignor therefrom.

*The forms of these different covenants may be seen, Appendix, No. III.*

The second mode by which an estate for life or years may be destroyed, we have said is by surrender; which we shall now consider.

*Of a Surrender.*

A surrender is the yielding up an estate for life or years (a) to him who has the immediate remainder or re-

<sup>2.</sup>

By surrender.

(a) For an estate at *will* or *sufferance* cannot be surrendered. *Cro. Eliz. 156.*

version,

Surrender may be by deed or in law.

What necessary to make a good surrender by deed.

Surrenderor must be in possession; and have the less estate.

Surrenderor's reversion must be immediate.

version, wherein the estate for life or years may drown by mutual agreement of the parties (a). *Co. Litt.* 337. b.

A surrenders may be effected either by an express agreement between the parties for that purpose, or by implication of law.

An *express* surrenders must be in writing; for by the Statute of Frauds and Perjuries it is provided, that no leases, estates, or interests, either of freehold, or terms for years, shall be surrendered, unless by deed or note in writing, (b) or by operation of law; but no particular form of words is necessary to make a surrenders; for as a lease is only a contract between the lessor and lessee, any words which are sufficient to shew the intention of the parties to dissolve that contract, will work a surrenders (c). *Cro. Jac.* 169.

Two things however are material in a surrenders by deed; viz. 1. That the person surrendering be in possession of the thing surrendered. 2. That the person to whom the surrenders is made have a greater estate in the premises than the surrendersor. *Co. Lit.* 337.

So that if a lease be made to commence at Michaelmas next, it cannot be surrendered by *deed*, because the lessee is not in possession of the thing demised, and there is no reversion in which it may drown. *Co. Lit.* 338.

*Noy Max.* p. 93.

Nor can he who has a lease for 20 years surrender to him who has a lease for 10 only, because the surrenderee must have the greater estate wherein the less may drown. *Co. Lit.* 218.

And the reversion of the surrenderee must be an *immediate* reversion, so that if a lessee for 30 years lease to B. for 10, B. cannot surrender to the first lessee. *Plow. Com.* 541.

(a) See forms of surrenders, *Appendix*, No. IV.

(b) When it is made by note in writing, no stamp is necessary, nor need it be sealed or delivered. 1 *Wilf.* 2d part. 27.

(c) In *Farmer on Demise Earl v. Rogers*, 1 *Wilf.* 2d part. 27, the court said that the words *release and discharge* were much stronger than those which would amount to a surrenders.

By a surrender in *law*, it is not necessary that the <sup>What requisite  
to a surrender  
in law.</sup> surrendoror be in actual possession, for if a lease be to commence at Michaelmas next, and the lessee take a new lease before Michaelmas, this is a surrender in law of the former lease, (a) because by accepting a new lease he admits the lessor to have a power of making such, which he could not do if the first lease were to continue. *5 Co. 4.*

So if a lessee for 20 years take a new lease for 10 years to commence at a future day, it is an *immediate* surrender of the 20 years lease, and the lessor may enter *presently*. *Cro. Eliz. 522.*

Or if lessee for *life* accept of a lease for *years*, it will be a surrender of the life estate. *Perk. 68.* <sup>Lessee for life  
may surrender  
to him for  
years.</sup>

A surrender of an estate for a man's own life may be made to him who has the reversion for life; as an estate for a man's own life is in judgment of law a greater estate than for the life of another. *Co. Lit. 338.*

Where there was a lease for 20 years, and the lessor granted the reversion to another for one year, it was held that a surrender to the reversioner was good, and was the same thing as surrendering to the lessor himself. *Cro. Eliz. 302. pl. I.*

Where lessee agreed that lessor should have the premises as mentioned in the lease, and should annually pay a consideration besides the rent, it was held that this operated as a surrender of the lease, and that the sum to be paid above the rent was to be considered as a sum in gross, and not as *rent*. *3 Term Rep. 441.* <sup>Care as to rent.</sup>

If a tenant make a surrender of his estate to his lessor, all rent due up to the time of the surrender is extinguished, un- <sup>Ibid.</sup>

(a) The new lease must be a demise of something of the same nature as that which was leased by the old one, or it will not work a surrender, for there is otherwise no inconsistency in their standing together. *Cro. Eliz. 873. Moor, 636.*

And it must be a *valid* lease, and such an one as the lessee can enjoy, or it will not be a surrender of the first, for the late reason. *4 Bur. 2213.*

less it be previously granted away by the lessor to a third person, in which case it shall be paid. 8 Co. 145.

New lease on  
renewal good  
without surren-  
der of under-  
lease.

Formerly the renewal of leases for life or years was a surrender of all under-leases, and therefore could not be done without the consent of the under-tenants; to remedy which inconvenience, it was enacted by 4 Geo. 2. c. 28. § 6. that if any lease for life or years, where there are under-tenants by lease, shall be surrendered in order to a renewal, the new lease should be valid without a surrender of the under-leases, and that the lessees, by virtue of such new lease, should be entitled to the rents of the under-tenants, and the same mode of recovery thereof as if the original lease had been kept on foot.

The last method we think it necessary to mention, by which estates for life or years may be destroyed, is by *forfeiture*.

#### Of Forfeiture.

3.  
By forfeiture.

Forfeiture is a punishment annexed by law to some illegal act or negligence in the owner of lands, tenements, or hereditaments, whereby he loses all his interest therein. 2 Black. Com. 267.

How an estate  
may be forfeit-  
ed.

An estate for years or otherwise may be forfeited not only by the commission of those acts which by the grant or lease are expressly forbidden on pain of forfeiture, but generally by any act done by the tenant, which is inconsistent with the nature of his estate, or the implied conditions on which it is holden; these are principally, 1. By alienation contrary to law. 2. By waste. 3. By non-payment of rent. Of these we shall treat in order.

1. By alienation  
contrary to law.

1. *By alienation contrary to law.* When a tenant for life or years grants a greater estate to another than by law he is entitled to grant, so as to divest the estate of him who is entitled to the reversion (a), it is a forfeiture, as, if a

(a) It is a grant by those species of assurances only which divert the reversion, as by feoffment, fine, or recovery that work a forfeiture, and not by those whose nature it is to convey no greater estate than the grantor is possessed of, as lease and release, &c. 3 Mod. 15.

tenant

tenant for his own life grant his estate during the life of another, (who may live longer than himself), or in fee, or tail; or if tenant for years grant for a longer term than he has in the premises (a) he forfeits his estate to him who has the remainder or reversion, whose estate is thereby put in jeopardy, and in danger of being defeated: it is but just, therefore, as Sir W. Blackstone observes, "that the estate should be forfeited; and taken from him who has shewn so manifest an inclination to make an improper use of it." There is, moreover, an implied condition annexed by law to every man's estate, "that he shall not attempt to create a greater interest than he himself has." *Co. Lit. 251. Noy Max. c. 10.*—And so also if tenant for life or years commit felony, the king, or other lord of the fee, is immediately intitled to their estates by forfeiture, for the law annexes another condition also to every man's estate, "that he shall not commit felony." *Co. Lit. 215.*

We have also before seen that alienation to a foreigner (not being a merchant) is a forfeiture to the king—the reason of which is founded on the general policy of guarding against an over-run of foreigners. *Ibid. 2. b. 2 Show. 135.*

But if such tenants have, before the forfeiture, granted a legal estate of their interest to a third person, (as, if tenant for 30 years make a lease for 10) that estate shall be good; for the law will not injure an innocent grantee on account of the mal-feasance of his grantor, nor permit the grantor by his own act to invalidate a contract which he himself has entered into. *Co. Lit. 233.*

So, likewise, if a tenant do any act in a court of record which amounts to an express or virtual disclaimer of his estate, as, if he make claim of a larger interest than was granted to him, or if by accepting a fine, or attorneying tenant to a stranger, he affirm the reversion to be in a stranger,

(a) Though a lessee grant a longer term than he actually has in the premises, the lease is not void, but good *in equity*, for so many years as he lawfully could grant. *2 Term Rep. 171.*

and not in his lord, or the like, it will, for reasons similar to the above, amount to a forfeiture of his estate. *C. Lit. 252.*

*As to forfeiture of copyhold estates, see p. 51. chap. v.*

*In what cases acceptance of rent after forfeiture will be a waiver, and in what not, see p. 51. chap. viii. § 5.*

2.  
By waste.

2. *By Waste.*—An estate for years, life, &c. may be forfeited also by committing waste (*a*).

Waste is defined to be a spoil or destruction in houses, gardens, trees, or other corporeal hereditaments, to the injury of him that has the remainder or reversion in fee-simple, or fee-tail; whatever therefore does a lasting damage to the freehold or inheritance, is waste, whether it be done by the voluntary act of the party, as by pulling down houses, &c. or be permitted only, as by suffering buildings to decay for want of necessary repairs. *C. Lit. 53.*

Removing  
things affixed to  
the freehold.

Therefore tearing up floors, wainscots, benches, doors, windows, walls, and whatever else is so fixed to the freehold as to become a part of it, is waste (*b*). *4 Rep. 64. Noy Max. c. 14.*

Diminishing  
stock, &c.

So to diminish the number of fish in a pond, pigeons in a dove-house, rabbits in a warren, so as to reduce it below the stock necessary to be kept up for the purpose of breeding, is waste. *C. Lit. 53.*

Cutting down  
trees.

As also to cut down or lop timber trees, or trees likely to become timber, or otherwise to hinder their growth, or to pull up fibered trees, or willows, is waste, (*c*) as lessening the value of the inheritance. Oak, ash, and elm are reckoned timber in all places; and in particular counties such

(*a*) By stat. Glouc. 6 Ed. 1. c. 3. a tenant committing waste shall forfeit not only the thing wasted, but also treble damages.

(*b*) It has been held, however, that a tenant may, during his term, but not afterwards, remove chimney-pieces or wainscot put up by himself. *1 Atk. 477. 1 Term Rep. C. B. 258.*

(*c*) But to cut down dead trees, though of the growth of timber, is no waste. *C. Lit. 53. Noy Max. 4.*

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other trees as are used for building are on that account deemed such (a). *Noy Max. 14. 4 Rep. 62.*

To convert one species of land into another is waste, as to plough up and turn into tillage grounds which have usually been pasture, or on the contrary to lay down and turn into pasture land which was before arable; for this is altering the description of the estate, and making it vary from the title deeds, by which means the lord is in danger of losing his inheritance; and for the same reason it is waste to convert one species of building into another, even though it be improved in value. *Hob. 296. 1 Leo. 309.*

Converting one species of land into another.

It is waste to open coal-pits, mines, &c. because it is depreciating the value of the inheritance (b).

To open coal-pits, &c.

And further, by 11 Geo. 2. c. 19. "If tenant at rack rent, or where the rent reserved is at least three-fourths of the yearly value, shall be one year's rent in arrears, and shall desert the demised premises, leaving the same uncultivated, or unoccupied, so that no sufficient distress can be had, two justices of the peace (after notice affixed to the premises 14 days before), may give the landlord possession, and the lease shall be void." *5 Rep. 12. 2 Mod. 193.*

Leaving the premises uncultivated is forfeiture.

3. *By non-payment of Rent*—for which see title *Ejectment*, chap. viii.

We shall now proceed to make some observation on the useful head of *Agreements*; which, to have been strictly methodical, should perhaps have preceded some of the former divisions; but we found it impossible to introduce it earlier,

(a) But a tenant may, (as we have before observed) cut underwood at proper seasons in the year, and take sufficient wood for repairs, implements of husbandry, and firing, without committing waste, unless he is restrained from doing so by the terms of his lease.

(b) But if they were open at the time the premises were demised to him, he may continue to work them for his own use, as they are then become a part of the annual produce of the land. *Hob. 295. Noy Max. 87.*

without too much disconnecting the parts of the subjects we were treating of.—Therefore,

6. *Of Agreements for Leases, and other Demise of Premises (a).*

Nature of an  
agreement.

An *agreement*, in the ordinary legal acceptation of the word, imports a memorandum or minute, containing the consent of one person to part with, and of another to receive, some right, property, or advantage; and it is frequently made preparatory to a more formal contract.

Its requisites.

It is evident that the first requisite to a valid agreement is, that there be a person capable in law of entering into an agreement—an object, about which an agreement may be lawfully made—and a person free from the disability of accepting or agreeing to such object.

Who are capable  
of agreement.

An agreement being an act of the mind, it follows that none but those capable of exercising the faculty of thinking can bind themselves by any contract; consequently a person of deranged understanding cannot enter into an agreement.

*1 Bac. Abr. 67.*

Upon the same principle infants (*viz.* persons under the age of 21 years) are incapable of binding themselves to any agreement to their disadvantage; persons under that age being supposed to want sufficient discretion to act with proper judgment, and are therefore under the protection of the law. *Ibid.*

But an agreement entered into by an infant to accept a lease for years will make him liable to an action for the rent, even during his under-age, provided he take possession accordingly, and the rent reserved be reasonable; for it will be intended to be for his benefit. *2 Bulf. 69.*

So where it appeared to be for the good of the infant, the Court of Chancery has decreed the allowance of building-leases made for a term of 60 years. *2 Vern. 224.*

How agreements  
are to be made;

Agreements ought to be perfect, full, and complete, so as to shew with precision what is meant to be stipulated, and

(a) Various forms of these agreements will be found in *Appendix, No. I.*

the

the mutual consent of the parties thereto, that an action should be explicit; may be maintained upon them if necessary.

It should also provide for the possibility of a failure in either of the parties, which is usually done by annexing a penalty for non-performance; and it is adviseable to stipulate expressly, that the party failing in performance shall reimburse the other party all expences which he shall be put to on that account (unless for leases not exceeding 3 years).

By reason of the statute of frauds, (a) all agreements respecting land must be in writing, and both parties ought properly to execute the agreement; though if it be executed by one of them only it will be valid, provided the other party is so circumstanced as that he may have a mutual remedy.

¶ *Eq. Ca. N. 21.*

Indeed the object of the above Statute being avowedly for the prevention of frauds and perjuries, the courts have in general construed it favourable in all cases where that object is not endangered; and conformably to this rule they have in two cases held agreements to be good, though resting singly on *parol*, viz. where they are admitted by the party who is to perform them, and where to enforce the Statute literally would in effect be counteracting its spirit: as if an agreement be intended to be put into writing, but prevented by the fraudulent practice of one of the parties.

*Ibid.*

When an agreement is in writing, the consideration is not enquirable into, for it shall be intended to be executed on good consideration. *Plow. 308.*

Need not express a consideration.

It has been adjudged that an agreement to grant a lease at a future period, accompanied with words of present contract, as that "the lessor doth hereby demise, &c." shall be good as a *present lease*, if it were intended so to be by the parties.

Cases in respect to agreements.

2 *Black. Rep. 973.*

But it would be otherwise if no such intention appeared.

¶ *Term Rep. 735. 2 Ibid. 739.*

(a) See the purport of this stat. ante, p. 14.

## II. Of an Estate at Will.

An estate at  
will defined.

A second species of estates less than freehold is an estate at *will*. This is where lands or tenements are let by one man to another, to hold at the will (or during the pleasure) of the lessor (a). *Lit.* § 68;—or, in the words of a more modern writer, where one enters and enjoys the land by the express or implied consent of the owner, without there being any obligation, either on the part of the lessor or lessee, to continue it for any certain or determinate time. *Butler*, note *Co. Lit.*

Incidents to this  
estate,

But though it is said to be at the will of the *lessor*, yet it is in fact at the will of both parties, and may be determined at either of their options (b). *Co. Lit.* 55.

This, however, must be understood with some restrictions, for the law will not suffer any sudden determination of the will of one party to operate to the material injury of the other.

So that if a tenant at will sow his land, and the landlord determine the estate before the corn be ripe, the tenant shall nevertheless have free liberty to enter upon the land and cut and carry away his crop; the landlord would otherwise be benefited by his own iniquity, which is contrary to a maxim of law, *that no man shall take advantage of his own wrong*. *Vide p. 6.*

And on a like principle of justice, the lessee shall in all cases have reasonable time allowed him to remove his goods, &c. after the determination of his estate by the *act of the lessor*. *Lit.* § 69. *Noy Max. c. 11.*

(a) This is so precarious a tenure, and attended with so many inconveniences, that it is very seldom granted; and the courts have, of late years, very properly, disconvenanted it as much as possible, by construing it, whenever they could, to be a tenancy from *year to year*.

(b) But by the custom of *London* a tenant at will is entitled to a quarter's notice to quit, if his rent be under 40*s.* a year, and to half a year's notice if it be above 40*s.* *Siderf.* 20.

But

But in the case of emblements before mentioned, if the lessee, by forfeiture or otherwise, determine his estate by his own act, he shall not be entitled to them, because it is by his own default that he suffers. *Lit.* § 69. *Noy Max.* c. 11.

And so if the *lessee* determine the will between the quarter-days, he shall pay rent up to the end of the quarter; and on the other hand, if the *lessor* determine the will between the quarters, he shall have rent only up to the last quarter. *Salk.* 414. *Ibid.* 222.

An estate at will may be determined either by the express declaration of either party (a), or by implication of law.

How an estate at will may be determined.

By express declaration.

An express declaration by the lessor is where the lessor, or some other person authorised by him, enters upon the land, and says, "I here enter and take possession of my land," or the like; and he may afterwards cut a twig, or a piece of turf by way of symbol (b). *Lil. Conv.* 310.

Or by implication of law.

An implied determination may be by entry upon the land in the absence of the lessee, with an intent to determine the will, or by exercising an act of ownership over the land, as by digging the soil, cutting wood, and the like: by granting a lease thereof to commence immediately; by distraining for rent; by the death of the lessor or lessee (c); or the marriage of a woman lessee. An act of high treason has also been held to be an implied determination of the will. *Co. Lit.* 55. b. 2 *Liv.* 88. *Noy Max.* c. 11. 1 *Wilf.* 176.

The estate may also be determined by the lessee's committing waste, or by assigning the premises over; or in short

(a) See chap. vii.

(b) Of all this there ought to be at least two witnesses, who, to preserve their testimony, should sign a memorandum of the transaction.

(c) But since estates at will have been construed to be estates from year to year, it has been held that in case of the *lessor*'s death the lessee cannot be ejected without six months notice given him by the representatives of the lessee. 2 *Term Rep.* 159. and that if the *lessee* die his representatives may hold possession till the like notice given. 3 *Wilf.* 25.

by his doing any act which is inconsistent with the nature of his estate.

*As to the notice to quit requisite to be given to tenants at will, vid. chap. vii.*

*And the mode of recovering rent of tenants at will, chap. viii.*

### III. Of an Estate by Sufferance.

Estates by sufferance defined.

An estate by *sufferance* is where a person having possession of lands or tenements by lawful demise, continues in possession thereof after his estate is ended; as, if a lessee for years holds over after the expiration of his term (a). *Co. Lit. 57. b.*

This estate is now very unusual unless with the consent of the landlord, for by stat. 4 Geo. 2. c. 28. tenants at sufferance who hold against the landlord's consent are put upon the same footing with respect to the payment of double rent, after notice given them to quit, as we before observed of tenants for years (b).

If a landlord accept rent of a tenant after the expiration of his lease, or does any other act by which he shews his consent that the tenant should continue possession, he converts the estate into tenancy from year to year. *Co. Lit. 57. b.*

This estate by sufferance, as we before observed, is now become so unfrequent, owing to the last-mentioned act and other inconveniences attending it, that, short as we have been in our observations upon it, we imagine we shall be thought sufficiently copious.

(a) In this case it has been held that the landlord may bring an *ejectment*, and recover possession without having previously given notice to quit. *1 Term Rep. 53. 162.*

(b) The double *rent* given by this statute may be recovered by *distress* as single rent; but double the improved *value* can be recovered by *action of debt only*. *1 Black. Rep. 535.*

## C H A P. V.

## OF COPYHOLD ESTATES.

**A** Copyhold tenure, or a tenure by copy of court roll, Copyhold estate, what. is an estate held at the will of the lord, according to the custom of the manor in which it lies. This estate was formerly held *absolutely* at the lord's will, and as precarious in its duration, (if not more so), as that of *tenant at will* mentioned in a former chapter: but though it is still, in truth, held at the will of the lord, and is so expressed to be in the court rolls, (a) yet that *will* from length of time, and the indulgence of particular lords, is now so limited and restrained by the custom of the manor, that it is no longer arbitrary or precarious, but fixed and established by the custom to be the same and no other than that which time out of mind (b) has been invariably exercised (c); so that copyholders have now as permanent a property in their lands as the lord himself, and, when copyholds of inheritance with a fine certain, an estate scarcely inferior in point of interest, and in many respects, (particularly in the security of their title by reason of their admissions being recorded in the manor court) (d), superior to that of an absolute freeholder:

(a) "At the will of the lord," are words so material to express a copyhold, that if they be omitted in pleadings, it shall be intended to be a customary freehold. *Cro. Car. 219.*

(b) Copyholds must have existed time out of mind; they cannot therefore be created at this day. *1. Leo. 56.*

(c) If the lord oust his tenant contrary to the custom, he may have an action of trespass. *Co. Lit. 60. b.*

(d) An entry in the court rolls of a manor, stating the mode of descent of lands in the manor, is admissible evidence of the customary descent, though there be no proof of any person's having taken agreeably to it. *5 Term Rep. 26.*

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yet his estate is never in law considered as a freehold, because the freehold of the whole manor always resides in the lord.  
 1 *Bur.* 1543. 2 *Black. Com.* 147.

**Copyholders  
may have va-  
rious estates.**

As the customs of different manors (by which copyhold estates are entirely and in all respects regulated) differ as much as the wills of their ancient holders, a copyholder may, if warranted by the custom, have all those various estates which we have enumerated in the preceding chapters, as an estate in *fee-simple*, *fee-tail*, (a) for life, &c. and hold them united with his customary estate at will, liable to be determined, however, by committing such acts, or by the happening of such events, as the will of the lord (promulgated by the custom) has declared to be a determination of the estate: these are in some manors the cutting down timber, in others the non-payment of the customary fines, in others the want of issue male, &c. &c.

The customs of different manors being so many and various, to enumerate them all were impossible; we must content ourselves, therefore, with mentioning those general customs only which extend to all copyhold estates, in whatever manor situated, and noticing the principal decisions which have been made upon them by the courts, first however premising, that two main requisites are held to be the supporters of the copyhold tenure, and without which it cannot exist; these are, 1. That the lands be parcel of and situated within the manor of which they are held. 2. That they have been demised or demiseable by copy of court roll from time immemorial. *Co. Lit.* 58. b.

**Requisites to  
every copyhold.**

By the general custom of all manors, a copyholder is intitled to the estovers, or botes we have formerly spoken of, that is to say, house-bote, cart-bote, and hay-bote; these he

**The principal  
customs of copy-  
holds in general.  
Estovers.**

(a) A copyhold limited to husband for life, wife for life, heirs of the bodies of husband and wife, with remainder in fee to the survivor, is, after the death of the husband, an estate-tail after possibility of issue extinct in the wife; and the estate vests in him who is heir of the body of both husband and wife. 2 *Atkin.* 101.

may

may take from the land without leave or assignment of the lord. 13 Co. 68.

Every copyholder may make a lease for one year certain, of his lands, without licence, and his lessee may maintain an ejectment for the possession. 9 Co. 75.

Copyholds of inheritance descend to the heirs of the tenant according to the rules of the common law (*a*). 4 Co. 22. Co. Cop. 114.

Heriots (*b*), wardship, and fines are incident to most copyholds; heriots belong as well to copyholds for life, as to those of inheritance, but wardship and fines to those of inheritance only. 2 Black. Com. 97.

Heriots are due to the lord, and become vested in him as his property, immediately on the death of the tenant. In some places there is a customary composition in money in lieu of a heriot, by which the lord and tenant are both bound, and also their representatives, if it be an *ancient* custom; but a *new* composition of this sort will not bind the *representatives* of either party, because no new custom can now be created, as it is essential to a good custom that it has existed *immemorably*. Co. Cop. § 31. 2 Black. Com. 97. 422.

Heriots, whether by service or custom, if due by ancient tenure, may be seized, though they be off the manor, but not if they be reserved by deed. 1 Show. 81.

Where *wardship* prevails, the lord is the legal guardian, and *Wardships*.

(*a*) But though in respect of *descents* copyholds are governed by the rules of the common law, yet they do not partake of the nature of freeholds in other respects; for they are not assets in the hands of the heir, nor shall a woman be endowed, or a man be tenant by the curtesy of a copyhold, unless by special custom. 6 Mod. 64. 4. Co. 23.

And by *special custom* a descent may be contrary to the rules of the common law, but it will then be *strictly construed*; as, where there was a custom that lands should descend to the *eldest sister*, if there be neither son nor daughter; this was held not to extend to an *eldest niece*. *Term Rep.* 466.

(*b*) A heriot is the best beast, or other personal chattel, (as the custom may be) which the tenant died possessed of.

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accountable to his ward for the profits; he seldom, however, takes the guardianship into his own hands, but usually assigns some relation of the infant to act in his stead. *1 Show.* 81.

*Fines.*

As to *fines*, they are sometimes arbitrary and at the will of the lord; sometimes fixed by the custom: some are due on the death of each tenant, and others on the alienation of the lands: but though *due*, on death or alienation, they are not *payable* till the admission of the next tenant. *2 Term Rep.* 484.

But where the fine on the descent or alienation of a copyhold is arbitrary, it is tied down to be *reasonable* in its extent, and therefore two years improved value of the estate is the utmost allowed to be taken (*a*). *2 Ch. Rep.* 134. *Doug.* 697.

Recent determinations respecting fines on admission.

In respect to the fine of a copyholder to be paid on admission, the following determinations have recently occurred.

If a copyhold be granted to one for years, and he die during the term, his executor shall pay a fine on admittance, the fine being due on every change of the tenant. *1 Bur.* 206. 218.

One *gross* fine cannot be assessed on the admission to several tenements, but a separate fine must be set upon each (*b*). *Doug.* 721.

Fines shall be according to the present improved value, and not according to the rent reserved under a subsisting lease granted by licence of the lord, because otherwise the lord might be imposed upon. *Stra.* 1042.

And by 9 Geo. 1. c. 29. "the fine imposed on admittance of infants and feme coverts may be demanded by the bailiff, or agent of the lord, by a note in writing, signed by the lord or his steward, to be left with such infant, or feme covert, or with the guardian of the infant, or husband of

(*a*) The lord is not bound to make any deduction on account of land-tax. *Doug.* 724.

(*b*) If, in an action for the fine, a gross fine be stated in the declaration, it will be error, and not cured by verdict. *Doug.* 721. 731.

the feme covert, or with the occupier of the land to which such admittance was made."

If such fine be not paid, the lord may enter and receive the profits of the copyhold till he be satisfied. *Stra. 1042.*

If the guardian of the infant, or husband of the feme covert, pay the fine, they may reimburse themselves out of the rents of the copyhold (a). *Ibid.*

If the lord of a manor refuse to admit a surrenderee on account of a dispute concerning the fine to be paid, the court will grant a mandamus to compel him, without examining the right to the fine. *2 Term Rep. 484.*

Other incidents to the copyhold tenure (besides those already noticed), as collected from the latest decisions on the subject, are the following:

Other incidents,  
&c. of copy-  
holds.

Copyholds are not within the statute of frauds and perjuries, and therefore will pass by a will attested by only two witnesses, or even one only. *2 P. Wil. 258. 2 Brown 56.*

A recovery in Common Pleas may be good of customary freeholds, which pass by surrender in a borough court, though it is not good of copyholds. *1 Atk. 474.*

A woman is by the custom of many manors entitled to her free-bench out of her husband's copyholds; but this does not extend to all the lands he was seized of during the coverture, but to such only as he *died seized of*. *2 Atk. 525. Cowp. 481.*

A customary of a manor delivered down with the court rolls from steward to steward time immemorial, is evidence to prove the course of descent, though not signed by any tenant. *1 Term Rep. 466.*

It has been held that a copyholder, to hold to him and his heirs for 3 lives, without power of compelling the lord to renew on the falling in of the lives, cannot cut down timber growing on his estate. *2 Ibid. 766.*

Copyholds ought to be always demised or demisable by

(a) See what services, &c. due to the lord may be recovered by *distress, infra, chap. viii. tit. Distress.*

copy of court roll; and they cannot be created by operation of law. *Co. Lit.* 58. *2 Term Rep.* 415, 705.

Copyholds may, by special custom, be entailed; and wherever the custom allows a tenant to bar the estate-tail, it may be done by surrenders (a). *2 Vez.* 596. *Amb.* 279.

The mode of conveying copyholds.

We shall now say a few words concerning the mode of conveying copyholds from one man to another, at the same time noticing the principal resolutions of the courts on that head; and conclude our remarks upon copyhold tenure by some observations on the means by which the interest of a copyholder may be destroyed.

By surrenders.

The most general mode of conveying copyholds is by *surrender*. A surrender is the yielding up of his estate by the tenant into the hands of the lord, for such purposes as in the surrender are expressed (b). This is done by the tenant's resigning (either in the manor court, or out of it, according to the custom, by the delivery of a rod or other symbol) all his interest and title to the estate into the hands of the lord, by the hands and acceptance of his steward (c), or sometimes by the acceptance of two customary tenants of the manor, in trust to be granted out again by the lord to such persons, and to such uses, as are mentioned in the surrender (d). Immediately upon such surrender made, the lord by his steward grants the estate to the surrenderee, and admits him to hold by the ancient rents and customary services, according to the form and

(a) But *Willes C. J.* thought recovery the most proper mode. *2 Vez.* 603.

(b) See the usual form of a surrender, and an admission thereon, *Appendix*, No. IV.

(c) Where a steward's authority is *ordinary and necessary*, as in this case, and not of a *judicial* kind, the courts are not particular in enquiring into the regularity of his appointment; on this principle a steward *de facto*, or in other words a *nominal* steward, has been held to be sufficient.

(d) If the uses be indorsed on the back of the surrender, and signed by the steward, it is sufficient, though they be not mentioned in the rolls. *3 Atk.* 73.

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effect of the surrender, which must be exactly pursued. On this grant and admission it is that the fine we have before spoken of is paid.

"This method of conveyance," Sir William Blackstone observes, (2 vol. *Com.* 367.) "is so essential to a copyhold estate, that it cannot properly be transferred by any other assurance. No feoffment or grant has any operation thereupon. If I would exchange a copyhold estate with another, I cannot do it by any ordinary deed of exchange at the common law, but we must surrender to each other's use, and the lord will admit us accordingly. If I would devise a copyhold, I must surrender it to the use of my last will and testament; and in my will I must declare my intentions, and name a devisee, who will then be entitled to admission (a)."

In order therefore to give the reader as clear an idea as possible of this peculiar species of assurance, we shall take a separate view of its several parts, viz. of the *surrender*, the *presentment*, and the *admittance*.

The *surrender*, though defined to be a yielding up of the copyholder's estate into the hands of the lord for the purposes therein mentioned, does not transfer any immediate possessionary interest to the nominee; it is little more of itself than a declaration of the surrendee's intention, and the *legal* estate does not vest till after *admittance* (b), till when the surrendee continues tenant of the estate, and must perform all the customary services due to the lord. He is, however, considered as a trustee for the surrendee, and cannot afterwards revoke his grant, or make any other disposal of the estates surrendered; on the other hand, the surrendee is entitled to the rents and profits from the

(a) But equity will supply the want of a surrender of a copyhold, if it be devised for the payment of debts, or to a wife and younger children unprovided for, 1 *Brown Ref.* 273. 2 *ibid.* 325. 3 *P. Wil.* 96. 322. 283. But this rule does not extend to grand-children. 2 *P. Wil.* 61. (*Sed cont.* 2 *Ves.* 582.) nor to natural children, brothers, or cousins. 2 *Ves.* 582. 3 *Ath.* 129.

(b) Consequently he cannot surrender to the use of another.

time.

time of the surrender, and may at any time, by bill in chancery or mandamus, compel the lord to admit in pursuance thereof. 2 *Ro. Rep.* 107. *Co. Cop.* § 39. 1 *Term Rep.* 600.

**Presentment.**

The *presentment* is when the surrender has been made *but of court*. In this case the jury or homage must at the next or some subsequent court, according to the custom, present, or find it upon their oaths, which presentment is an information to the lord or his steward of what has been transacted out of court. It must be brought into court by the same persons as took the surrender, if living, and must in all essential points agree with the surrender: presentment may be made, notwithstanding the death of the nominee, and his heir by the custom shall be admitted, and in all cases of refusal to make presentment by the persons into whose hands the surrender was made, they may be compelled, by petition to the lord in his court baron, and if he refuse to do justice, relief may be found in chancery. *Co. Cop.* § 40.

**Admittance.**

*Admittance* is the last stage or perfection of copyhold assurances, and is made either in pursuance of a surrender of the former tenant, or in consequence of a descent from the ancestor to the heir. In either case the lord is considered as a mere agent or instrument, to whom no interest passes by the surrender, and from whom, consequently, none passes by the act of admittance. It is immaterial, therefore, as to the *validity* of the admittance, whether the lord's title be good or bad, since he is *officially* as it were *obliged* to admit the nominee properly presented. There is a difference, however, between admittances on surrender, and those on descent; for by surrender, as we have observed before, nothing is *vested* in the *surrenderee* till admittance; but when the *heir* takes by *descent*, he is to most purposes completely tenant *immediately* on the death of his ancestor (a): he may enter and receive the profits, and (after payment of his admission fine) may surrender his estate to another's

(a) He cannot, however, be sworn on the homage, or maintain an action against his lord, till admittance.

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use. 4 Co. 23. 2 Term. Rep. 197. He is nevertheless obliged to be admitted within a short time after his executor's death, or else by the custom of every manor he will forfeit either the copyhold itself, or some pecuniary penalty. Co. Cap. § 41.

By Stat. 9 Geo. 1. c. 29. § 1. *Infants and feme coverts* being entitled by descent or by surrender to the use of a will, to be admitted to any copyhold, may, in their proper persons, or a feme covert by attorney, and an infant by his guardian, or if he have no guardian, by his attorney, appear in one of the three next courts for the manor, of which the copyhold premises are parcel, and offer themselves to the lord or his steward to be admitted tenants.

In respect to the surrenders and admissions of copyholders, the following determinations principally deserve our notice.

Determinations relative to surrenders and admissions.

A man may surrender a copyhold estate to the use of his wife, notwithstanding the rule of law, that man and wife being but one person, cannot contract; for the estate is first given to the lord, *from whom* the wife takes it as an instrument to convey the estate to her. 4 Co. 29. *Syst.* 145.

A feme covert cannot surrender her copyhold without the consent of her husband, nor will any custom that she shall, be good; it being contrary to law and the policy of nations, and if admitted would tend to make wives independent of their husbands. 2 Wilf. 1.

But a feme covert separated from her husband, may, under a covenant that she shall enjoy whatever property shall descend to her, surrender without her husband a copyhold descended to her after separation, without any special custom. *Black. Rep.* 344.

The surrender of a copyhold to the use of a will, (a), does not vest the estate in the appointee dying in the lifetime of the testator. 2 Vez. 77.

(a) No surrender is necessary in order to pass an equity of redemption by devise. 2 Atk. 37.

Nor will it apply to a will made previous to the surrender, because the will extends only to the estates the testator was seized of it at the time of making it. *Amb.* 299.

A copyhold surrendered to the use of a man's will, was held to pass by the description of all his *real* estate, where it appeared to be the testator's intention that it should. *2 Vez.* 164.

A surrender made to a woman when sole, is suspended; if not revoked, by her marriage; because by the marriage the surrender becomes fluctuating and ambulatory, till some further legal act be done to complete it. *Amb.* 628.

The same construction must take place in surrenders as in other law conveyances; and it is not sufficient (as in wills) that the intention of the parties was otherwife. Therefore, where a copyhold was surrendered to the use of husband and wife for their lives, remainder to their heirs and assigns, remainder to the right heirs of *A.* the husband and wife were to have an estate in fee, and not an estate-tail. *1 P. Wil.* 71. & *vid.* *2 Atk.* 101. *3d. Ibid.* 11. and *1 Show.* 285.

The surrendor is considered as a trustee for the surrenderee till admittance; and the surrenderee may maintain an ejectment before admittance; for the courts will not suffer a trustee to set up an objection against his *cestui que trust.* *1 Term Rep.* 600.

The court will not grant a *mandamus* to compel the lord to admit a copyholder by descent, because he has a complete title before admittance against all the world but the lord. *2 Term Rep.* 198.

We now proceed to our remarks on the *forfeiture* of copyholds.

How copyholds  
may be for-  
feited.

A copyhold estate may be forfeited by committing treason, or felony; by alienation by deed; by committing waste, either voluntary or permissive; by denying or withholding the customary services; by refusing to pay the customary fine; by disclaiming to hold of the lord; by neglecting to be admitted tenant within a year and a day, and

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a variety of other acts or omissions peculiar to each manor. *Lit.* § 71. *Oiv.* 17. *Rol.* 506. *Dy.* 211. *Co. Cop.* § 57. 8. *Co.* 99. In none of these cases, however, does the forfeiture accrue, till after the offence is presented by the homage or jury of the lord's court. *Co. Cop.* § 58.

Copyholds are forfeited by alienation by *deed*, as by *fine*, *recovery*, or *feoffment* with *livery*, which are absolute and immediate forfeitures, or by granting a lease for years, which is a forfeiture on the lord's entry (*a*); these acts being contrary to the nature and existence of the copyholder's estate, who, as we have observed, is in law deemed no more than a tenant at the will of the lord. *Co. Lit.* 59. a.

Waste is another cause of forfeiture in copyhold estates, and that whether it be *voluntary* or *permissive* only (*b*). But in this latter case, a court of equity will in general give relief to compel the lord to re-admit the tenant, on being tendered satisfaction for the injury sustained. *Rec. Chan.* 568.

By the custom of most manors it is also a forfeiture not to come to be admitted, and pay the fine due to the lord, after three proclamations made. But it will be no forfeiture without a special custom to warrant it (*c*). 8 *Co.* 99.

3 *Term Rep.* 170.

By Stat. 9 *Geo. I.* c. 29. it is provided, that no *infant* <sup>9 *Geo. I. c. 59*</sup> or *feme covert* shall forfeit any copyhold by neglecting or refusing to be admitted, or to pay the customary fine.

(*a*) A lease for *one* year only, is however held not to be a forfeiture, such lease by a copyholder, Sir Edward Coke observes, being warranted by the *general* custom of the realm. 4 *Co.* 26.

(*b*) What acts are deemed waste, see *ante* p. 34.

(*c*) The lord may however seize the estate till the heir come and pay his fine; but he must declare that it is on that account he retains it, or it will be construed to be an absolute seizure. 3 *Term. Rep.* 170.

If the lord would take advantage of the non-payment of a fine uncertain, he must set a reasonable fine, and prefix a day and place within the manor for payment of it, otherwise the non-payment is not a forfeiture.

The lord for the time being, and no other lord, shall take advantage of a forfeiture, except in those cases only where the act of forfeiture destroys the estate. *3 Term Rep. 173.*

If after committing of a forfeiture (viz. such a one as may be waived), the lord do any act which may seem to amount to a waiver, as, if he admit a presentation that the tenant died seized, and proclaim for his heir to come in, &c. it shall be a dispensation of the forfeiture. *3 Term Rep. 171. 471.*

Though a copyhold tenant for *life* surrender to the use of another *in fee*, it is no forfeiture, because the court rolls will always shew who is tenant; therefore the reversioner's estate is in no danger. *1 Term Rep. 466.*

## CHAP. VI.

### OF ESTATES IN SEVERALTY, JOINT-TE- NANCY, COPARCENARY, AND COMMON.

**A**LL the estates of which we have treated in the preceding chapters may be held in four different ways; in *severalty*, in *joint-tenancy*, in *coparcenary*, and in *common*.

Tenant in severalty.

A tenant in *severalty* is he that holds lands, &c. in his sole right, without having any other person partaking with him in the interest of his estate: this is the most usual way of holding an estate, and that to which all our preceding rules and observations have reference, and were intended to apply.

Joint-tenancy.

An estate in *joint-tenancy* is where lands or tenements are granted to *two or more* persons to hold in *fee-simple*, *fee-tail*, for *life*, for *years*, or at *will*. The grand incident to this estate is, that on the death of one of the tenants, the whole interest devolves on the survivor.

An estate in *coparcenary* is when lands of inheritance descend from the ancestor to two or more persons.

Tenant in  
Coparcenary.

A tenant in *common* is when two or more persons hold the same estate by different titles; as, if a joint-tenant grant his part of the estate to another, the grantee and the other joint-tenant will hold as tenants in common.

Tenant in  
common.

We have thought it necessary, for the sake of regularity, just to enumerate these several estates, but to enter at large into their different properties and peculiarities would be entirely foreign to our present purpose, and altogether useless to our readers; we shall, therefore, proceed to such remaining parts of our subject as we conceive to be of more general utility. Those, however, who wish for further information concerning them, may meet with an ample degree of it, under their respective titles, in *Co. Lit. Lil. Convey. & a Black. Com.*

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## CHAP. VII.

### OF NOTICE TO QUIT. (a)

WE formerly observed, in speaking of estates at will, that the law would not suffer such a sudden determination of the tenancy, by either landlord or tenant, as might tend to the manifest and unforeseen prejudice of the other party, and that partly upon this principle the courts had of late years leaned as much as possible towards construing demises for an *uncertain* period to be held from *year to year*, in which case, neither party can determine the tenancy without *reasonable* notice to the other. What length of time, under different circumstances, has been considered to be *reasonable* notice, we now propose to enquire.

(a) See the proper form of notices to quit, *Appendix*, No. V.

## The LAWS of

And we may first observe, that notice is necessary only where the duration of the estate is fixed to no certain or predetermined time, but depends upon the pleasure of the parties, or some other *uncertain* event; as tenant for the life of another; tenant from year to year; as long as the parties shall agree, &c. for where it is held on lease for a *certain term*, the tenant may be ejected at the end of his lease without any previous notice to quit (b), as he cannot but be apprized of the expiration of his term, when the tenancy is determined *as of course*, unless a fresh agreement be entered into. 1 *Term Rep.* 162.

And if the tenant have done any act which amounts to a renunciation of his tenancy, as attorneying to a stranger, or controverting his landlord's title, he may be ejected without any previous notice (as may his executor, in case of his decease), because he has himself determined his estate.

3 *Wils.* 25. *Couwp.* 622. 2 *Bro.* 161.

But in all cases where the estate is determinable at the will of either party, or at any other undetermined or uncertain period, the tenant cannot be ejected till *half a year's* notice has been given him to leave the premises: and such notice in the case of a tenant *from year to year*, must generally expire at the same time of the year as that on which the tenancy commenced; as, if a demise be from *Midsummer* to *Midsummer*, the notice to quit must be given at *Christmas*, so as to expire at *Midsummer* (b). 1 *Term Rep.* 163. *Ibid* 159. 3 *Wils.* 21.

(a) But in order to charge a tenant with double rent in pursuance of 4 *Geo. 2. c. 28.* in case he should hold over after the end of his lease, *reasonable* notice must be given him to quit at the expiration of his term. 1 *Term Rep.* 53.

(b) Notice to quit at any particular feast, will be *prima facie* evidence of holding from that time until the contrary be shewn. 2 *Black. Rep.* 1224. 1 *Term Rep.* 161.

If notice to quit at *Midsummer* be given to tenant holding from *Michaelmas*, he may insist on the insufficiency of the notice at the trial, though he made no objection to it when served. 4 *Term Rep.* 361.

But

But where a tenancy commenced previous to a mortgage or grant of the premises by the landlord, it was held to be immaterial when notice given by the grantee or mortgagee expired (a), it not being necessary in this case that the notice be made to expire at the time the tenancy commenced, as the mortgagee or grantee are not supposed to know when that was. 1 *Term Rep.* 380.

A question arose as to what notice it was necessary for a *lessor at will* to give to a *lessee at will of land*, before he could bring an ejectment, and it was unanimously held at a meeting of eleven judges, that *half a year's* notice must be given, and that the same notice was necessary as to houses let at will, unless some other custom prevail in the district where the house is situated (b), and such notice must expire at the end of the year, computing from the time the tenancy commenced. 1 *Term Rep.* 54. & *vid. id.* 162.

The same notice is required from an infant under 21, *Infans* who becomes entitled to the reversion of rents let from year to year as from the original lessor. 2 *Term Rep.* 159.

And so in a case where there was an agreement between landlord and tenant, that tenant should hold during the landlord's life, on condition that the landlord's son should be at liberty to take the premises on his coming of age; it was held that the infant must give reasonable notice, when of age, of his intention, and could not evict the tenant after a year's delay. 2 *Term Rep.* 436.

*Lodgings*, taken for a short period, are an exception to *Lodgings*, the rule we have laid down, that notice must expire on the

(a) No notice is necessary from a mortgagee who means only to get into receipt of the rents and profits without turning the tenant out of possession. *Doug.* 21.

(b) By the custom of *London*, a tenant under the yearly rent of 40*s.* is entitled to a *quarter's* notice only to quit, but tenant above that rent to half a year. 1 *Skin.* 642.

quarter-day whereon the tenancy began. These depend either upon the express agreement between the parties, or the particular circumstances of the case, as the length of time for which they are taken, &c. if for less than a year certain, any *reasonable* notice is held to be sufficient. *1 Term Rep.* 163. What is *reasonable* notice must, in case of dispute between the parties, be decided by a jury. In London, if no particular notice is mentioned, I believe it is generally understood that a week's notice shall be given, if the apartments are taken *by the week*, and a month's notice, if taken *by the month*—but if they be taken for a week, or month, or any other *time certain*, no notice at all is expected, it being necessarily implied, that when the period for which they were taken be up the tenant is to depart, unless he enter into some fresh agreement.

**Second notice.**

A second notice to quit or pay double rent, after the expiration of a former notice, has been held to be no waiver of the first notice, or of the double rent accrued by it. *Doug.*

175.

**Void notice.**

Notice which is not good for one year, will not be good for the next, as it will be presumed to be withdrawn. *1 Bro.* 161.

**How notice to be served.**

Generally speaking, where notice is required by law to be given to any party, leaving it at his dwelling-house is sufficient. *4 Term Rep.* 465.

**Double rent on refusing to quit;**

Where tenant of an estate holden by the year has a dwelling-house at another place, the delivery of notice to his servant at his *dwelling-house*, is strong presumptive evidence that his master received it, and will be left to the jury to say whether he did or not. *Ibid.* 464.

**and double value.**

By 11 Geo. 2. c. 19. If any tenant shall give notice to quit possession of premises demised to him, and shall not quit them accordingly at the time in such notice mentioned, he, his executors, or administrators, shall pay double the reserved rent for so long time as he shall continue possession after such notice given.

And by 4 Geo. 2. c. 28. If any tenant for life or years, or other person claiming under him, shall hold over after the

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determination of his term, *notice in writing* given for delivering up possession, he shall pay double the yearly value of the premises he shall so refuse to deliver up (a).

A *parol* notice to quit by a tenant, on a *parol demise*, is *Parol notice*, good notice, and within the meaning of this statute.

*In what cases acceptance of rent, after the expiration of notice to quit, is a waiver of such notice, and in what not*, vide infr. p. 63.

## CHAP. VIII.

### OF RENTS.

**R**ENT is defined to be a certain profit issuing yearly Rent defined. out of lands or tenements corporeal, and is in the nature of a return or compensation for the use and occupation of them. There are at common law various species of rent; as rent-service, rent-charge, rent-seek, &c.; but that which is usually reserved from a tenant to his landlord, as a retribution for the profits of land demised, is the only one which we have any thing to do with: and the law relating to this species of rent, composes so considerable a part of the information necessary for every landlord and tenant, that we shall spare no pains to be as minute and explicit as the importance of the subject requires: with this view we will consider,

Observation.

1. *How and to whom rent ought to be reserved.*
2. *To whom it is payable in certain cases.*
3. *Of the demand of rent.*
4. *Of the tender and refusal of rent.*
5. *Of the acceptance of rent.*
6. *Of the mode of recovering rent in arrear.*

(a) As to holding over by guardians or trustees of infants, husbands seized in right of their wives, and all others having particular estates determinable on a life or lives, see 6 *An. c. 18.* § 1.

I. *Con-*

## 1. Concerning the Reservation of Rent.

How rent is to be reserved.

Rent being, as we before observed, a profit issuing out of lands or tenements, by way of return or recompence for the use and occupation of them; it follows, that it must be reserved and made payable *out of* the lands or tenements demised, and *to* the person demising them. *Perk.* § 626.

It must not be a part of the thing itself; nor issuing out of something else; nor payable to a stranger. *Co. Lit.* 47. 142.

It must be reserved *yearly*; because, in contemplation of law, it is to proceed from the *annual* produce; but it need not be reserved *every successive year*; if it be *every other year*, or *every third year*, &c. it is good. *Ibid.*

Rent need not be reserved in *money*, for *corn*, or other things may be rendered by way of rent; or it may consist in *services*, as to plough so much land for the lessor, &c. *2 Black. Com.* 41.

It must be a *certain* profit, or what may at least be reduced to a certainty by either party; for if it were an *uncertain* demand, it would be impossible to award adequate damages in case of failure. *Co. Lit.* 96.

It will be proper to illustrate the foregoing rules by some examples.

If a lessee simply covenant to pay such a sum yearly, it is not a *rent*, but a sum in *gross*. *2 Bulf.* 281.

If a lease for years be made, rendering rent to the *heirs* of the lessor, the reservation is bad, because not to the *lessor* first.

If the reservation be of grass, herbage, or vesture of the land, it is bad, because these are part of the thing demised. *Co. Lit.* 47.

If a man demise at will, rendering rent after the rate of 18l. per annum, as long as the demise continues, it will be void, for uncertainty; as it does not appear what rent he shall pay in *certain*, or at what time. *4 Mod.* 79. *1 Sal.* 262.

A *rent*.

A rent cannot, at law, issue out of a term of years, but must come out of the reversion; therefore, if a lessee assign his term, he cannot distrain for the rent, without expressly reserving a power for that purpose (a). 2 *Wils.* 375.

2. *To whom Rent is payable in certain Cases.*

We have observed that rent must be reserved, and is payable to the lessor and his *heirs*; but this is to be understood only where the lessor has the inheritance, for in case of the death of the lessor a distinction is to be taken where the lands demised are freehold, and where leasehold.

As to freehold and leasehold premises.

In case of the death of a lessor, who had the fee simple of the premises demised, all rent becoming due subsequent to his death, will be payable, (as incident to the reversion), to his heirs at law; but if he had a term of years only in the premises, the rent would be payable to his executors or administrators, as part of his personal estate. *Went.* 53. 2 *Show.* 134.

And in the case of leasehold interests, the rent reserved so certainly and indisputably belongs to the *executors* or *administrators*, and not to the heir; that though in the lease it be expressly reserved to the *heirs* of the lessor, yet shall the executors or administrators have it. *Co. Lit.* 57.

And where a person has lands in right of his wife, and lets them to another for a shorter term than he has in them, and die, the rent reserved during the term will go to his executors or administrators.

But though rent of fee simple lands, will, as incident to the reversion, go to the heir, yet the arrearages which became due in the lessor's life-time will belong to the *executor*; for by 32 *Hen.* 8. c. 37. "The executors or admini-

Arrearages.

(a) Concerning reservations it has been held, that a *subsequent* agreement may by relation operate so as to make the rent commence from the beginning of a tenant's occupation. *Corwp.* 781.

The clearest and safest way, as laid down by my Lord Coke, is to reserve the rent generally during the term, without making a reservation to any person, and leave it to the law to distribute it. 8 *Co. 70.*

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*Strators* of tenant in fee-simple, fee-tail, or for term of life, unto whom any rent shall be due, and not paid at the time of their death, shall have action of debt for such arrearages against the tenants, who ought to have paid in the lifetime of the testator, or against the executors or administrators of the said tenants."

If rent, by the terms of the lease, is payable on the four usual feast-days for payment of rent, or *within twenty days* thereafter, and the lessor die *after* the *feast-day*, but before the expiration of the *twenty days*, the rent is payable to the *heir*, and not to the *executors* of the lessor; because the *legal and compulsory* time of payment is not till the end of the *20 days*. *Cro. Jac. 227.*

As to tenant for life, see *11 Geo. 2. c. 19. post. p. 64.*

If a landlord (of freehold premises), die between *sun-set* and *midnight*, on the day upon which the rent is reserved, the rent will belong to the executors or administrators of the lessor; but if *before sun-set*, then it will belong to his heirs; for it is payable at any time before sun-set, though not strictly due till midnight. *Co. Lit. 302. Vid. 1 P. Will. 178.*

Tenant in common.

If a tenant holding under two tenants in common, pay the whole rent to one of them, after notice from the other not to pay it, the other tenant in common may distrain for his share. *5 Term Rep. 246.*

Demand of rent.

In some cases an express demand of rent in arrear must be made before it can be recovered, and in others no demand is necessary. How far this distinction extends it is very material to enquire.

Where necessary.

The general rule is this, where the remedy given by the lease for non-payment of rent, is by way of *re-entry*, a demand must be made before the landlord can enter, otherwise his entry will be wrongful; the reason of which is, that the law will not suffer the tenant to be divested of his estate without a wilful default in him, which cannot appear till demand and refusal. *Co. Lit. 153. 201.*

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On a like principle a demand is necessary, where a *nomine paenæ* or penalty is reserved in case of non-payment. *Hob.*

207. 331.

If however a demand is dispensed with by the express terms of the lease, it is not necessary to make one previous to the entry, for in this case the lessee has undertaken to pay the rent whether demanded or not. *Dyer*, 68. 5 Co. 40 b.

But where the remedy is by *distress* (which is the legal and proper remedy of a landlord for recovery of rent in arrear, where no other is reserved in the lease), no previous demand is necessary in order to distrain, not even though the lease expresses that the lessee may distrain for rent behind, *being lawfully demanded*; because, in fact, the distress itself is a demand; and the tenant is not divested of his estate by a distress, as he is by re-entry; for on tender of the rent, the distress must be immediately withdrawn. *Ibid. Moor.* 883.

There are however some exceptions to the above rule, *Exceptions* which are principally these: when the rent is not payable on the land (which it is if no other place be mentioned), but at some other place appointed in the lease; and the tenor of the lease is, that the landlord shall distrain for rent behind, being first lawfully demanded *at the place mentioned in the lease*; though the remedy be by distress, yet he cannot distrain till demand. *Hob. 207.*

And also where the lessor omits to come and receive the rent on the day appointed in the lease for payment, and the tenant was on the land ready to pay it, and made a tender of it in the presence of witnesses; in this case the landlord cannot afterwards distrain, till he has first demanded it. *Ibid.*

Rent may be demanded, and is payable, at any time before sun-set on the day upon which it is made payable, so that there be light enough for the lessor to count it by. *Co. Lit.*

302.

A demand of rent, previously to a *re-entry*, must be made on the *most notable* place on the land, where the tenant, in

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contemplation of law, is supposed to be; therefore, if the premises consist of a house, &c. it must be made at the front door of the house; the person demanding need not *enter* the house, if he demand it *at* the door, it is sufficient. *And. 27.*

*J*But where a demand is necessary in order to *distain*, it need not be made at the *most notable* place on the land; for as the demand is merely to entitle the lessor to what he has an undoubted right to, a remedy for his rent, the law is not so strict, and it is sufficient if made any where upon the land. *Co. Lit. 153.*

*Note*, In making a demand for rent, whether previously to a distress or to a re-entry, care must be taken to demand the *precise* sum due, and the time when it became due must be mentioned, for if but a penny more or less than the sum due be demanded, or if it be demanded up to a wrong time, the demand will stand for nothing.

#### 4. Of Tender and Refusal of Rent.

Tender of rent.

Tender of rent is the producing and offering to pay it, at the time and place when and where it is payable, and if it be refused, the refusal may be pleaded in bar of any action for non-payment.

Where to be made.

If no particular place is mentioned in the lease where the rent is to be paid, it must be tendered on the land, or in the house or room from which it issues, (unless it be due to the king, when it must be paid either into his exchequer, or to his receiver in the country). *Co. Lit. 201.*

A tender of rent at the proper time and place will save a distress, or entry, or other condition in the lease, though the landlord refuse to take it, the tenant having done all that he was bound to do; the landlord, however, may still maintain an action for debt, or of covenant for his rent, but shall recover no damages for non-payment. *3 Salk. 344. 1. Vent. 21. 1 Show. 130.*

What a good tender.

Where tender is made to prevent a forfeiture, *the whole* rent due must be tendered (except land-tax), unless deduc-

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tions are by the lease allowed to be made. 30 Geo. 2. c. 3.  
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Tender of rent after distress is impounded, is insufficient.  
5 Term Rep. 432.

If the rent be tendered in a lump it is a good tender, for it is the receiver's business to count it out and see that it is right. 5 Term Rep. 115.

Tender in bank notes is a good tender, unless objection is made to them at the time. *Ibid.*

### 5. Of Acceptance of Rent.

If a landlord accept the last quarter's rent when there are arrears on a former quarter, he precludes himself from demanding the arrears, and it is said that no proof will be admitted to shew that they are unpaid. 3 Co. 65.

Acceptance of rent after the lease is forfeited, (with notice of the forfeiture) will do away the forfeiture and re-establish the lease, because the lessor's accepting the rent, sufficiently shews his will that the lease be continued, for he is not entitled to the rent but by the lease. *Cwyp. 803.* 2 Term Rep. 425; but otherwise, if there was no notice. 1 Show. 341. note (c).

We have seen that if an infant under the age of 21 years make a lease, he may avoid it when he attains that age, but if at his full age he accept of rent, (unless due before) he confirms the lease, and cannot afterwards avoid it. *Plow. 418.*

If a lessor accept of rent from his lessee's assignee, knowing of the assignment, he cannot afterwards distrain or have an action of debt against the lessee for rent, for the privity of contract is destroyed; but he may bring an action on the lessee's covenant, for no implication of law can do away an express and unconditional covenant. 3 Co. 24.

If lessee accept *single* rent after *double* rent is incurred, under 4 Geo. 2. c. 28. he waives the double rent, *Cwyp. 227.* After notice to quit.

Acceptance of rent for the occupation of the land *subsequent* to the time when notice to quit had been given and expired,

pired, is not of *itself* a waiver of the notice, but it will be left to the jury to consider, under all the circumstances, whether the notice was intended to be waived or not. *Coupl. 243.*

Acceptance of rent by a woman or man after the expiration of an estate for life, and of a notice given to the tenant to quit on a certain day, was held not to be a waiver of the notice, but only evidence of the tenant's holding from year to year. *1 Term Rep. 161.*

#### 6. How Rent in Arrear may be recovered.

Recovery of  
rent.

Having now enquired pretty fully concerning the reservation, demand, tender, and acceptance of rent, we will now proceed to consider how rent in arrear may be recovered where no tender has been made, and demand has been ineffectual.

Rent in arrear may be recovered, 1. By action at law, 2. By distress on the premises, 3. By ejectment.

By action.

1. *By action or suit at law.* This may be either on the lessee's covenant for payment, or in an action of debt.

Given by stat-  
ute 32 H. 8.

By stat. 32 Hen. 8. c. 37. "Executors or administrators of tenants in fee-simple, fee-tail, or for life, shall have action of debt for arrears of rent due in the life-time of their testators or intestates."

Formerly no action of debt could be maintained against a tenant for life, for rent reserved, because both the land itself and the chattels thereon were pledges for the payment of it, but now by stat. 8 Anne, c. 17. "Any person having rent in arrear upon any lease for life or lives, may bring action of debt for such rent, as if the same were due on a lease for years."

4 Geo. 2.

By 4 Geo. 2. c. 28. "Tenants holding over lands or tenements after the expiration of their leases, or terms, and notice given them to quit, shall pay double rent for the same, to be recovered by action of debt."

11 ibid.

By 11 Geo. 2. c. 19. "Where any tenant for life shall die before or on the day on which any rent was reserved, upon

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upon any demise which determined on the death of such tenant for life, the executors or administrators of such tenant for life may, in an action on the case, recover of the under-tenants, if such tenant for life die on the day on which the same was made payable, the *whole*; or if *before* such day, then a *proportionable part* of such rent: before which stat. if tenant for life died before the day whereon the rent became due, such rent was not recoverable.

And by the same stat. "Where the demise is not by deed, the landlord shall recover reasonable satisfaction in an action on the case for use and occupation; and if on such trial any rent shall appear to have been agreed upon, it shall be evidence of the quantum of damages."

An action of debt will lie at the common law also for arrears of rent due on leases for years or at will. *Co. Lit.* Action by the common law.

47. (a).

And if a penalty be given by the lease, in case of non-payment of rent, an action of debt will lie to recover it. *Ibid. 162.*

Action of debt will lie against a lessee for rent due after assignment of his term; for though the privity of estate is gone, privity of contract remains. *3 Co. 22. sed vid. Ibid. 24.*

Debt will lie *after* the expiration of the lease, for rent due *before*, the privity of contract still remaining. *2 Ibid. 227.*

The bankruptcy of a lessee is no bar to an action of covenant brought against him for rent due since the bankruptcy. *4 Term Rep. 94.* Bankruptcy no bar.

Nor is the sale of the lease under writ of *fieri facias* or *eligit*, or the forfeiture of it by attainder, a bar to such covenant. *Ibid.*

(a) It has been doubted, whether debt will lie for rent against a copyholder, particularly unless the lord, by conveying away the manor, has lost his remedy by distress. *Vid. 1 Roll. Abr. 374. Gilb. Ten. 308.*

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## Of Distress for Rent in Arrear.

2.  
By distress.

Distress is the taking of a personal chattel out of the possession of the wrong doer into the custody of the party injured, to procure a satisfaction for the wrong committed; this is the most common and the best remedy for the recovery of rent in arrear; it will, therefore, be expected of us, to be pretty full and explanatory on this head: in order to which we shall enquire,

1. Who may make distress for rent in arrear, and who may not.
2. Of what things distress may be taken, and of what not.
3. Of the time and manner of making distress.
4. How a distress is to be disposed of when taken.
5. How it may be replevied or avoided; and conclude with,
6. Some practical directions in making a distress.

## 1. Who may distrain for Rent in Arrear, and who may not.

Who may distrain.

By the common law, and the various statutes made in favour of this species of remedy for recovery of rent, all persons having the reversion or remainder of lands, &c. after the determination of the particular estate or existing term therein, may of common right distrain for rent in arrear without any clause of distress for that purpose contained in the lease; as if one seized in fee make a lease thereof, saving to himself the reversion, and reserving rent, or other services, the law gives him a remedy for the same by distress, without any express provision for that purpose; but if he save not to himself the reversion, he cannot distrain of common right, but must reserve a power of distress in the lease. *Co. Lit. 142. Cro. Eliz. 636.*

Executors and administrators.

By 32 Hen. 8. c. 37. "the executors of tenants in fee-simple, fee-tail, and for term of life, may distrain for rent due in the life-time of their testators and administrators, for rent due in the life-time of their intestates, so long as the premises

charged therewith continue in the possession or seizin of the tenant in demeān, who ought to have paid such rent, or any other person claiming from the same tenant by purchase, gift, or descent, in like manner as their testator, or intestate might have done.”

And by the same stat. § 7. a husband having such lands or tenements as aforesaid, in right of his wife, may distrain for rent in arrear; after his wife’s decease, as if she were living.

Husbands in right of their wives.

By stat. 8. An. c. 14. “ rent in arrear may be distrained for, though the lease whereon it is reserved be determined, so that the distresses be made within six months after such lease has expired, and during the continuance of the landlord’s title and tenant’s possession.”

Distress after expiration of lease.

By 4 Geo. 2. c. 28. § 6. “ in case any lease shall be surrendered in order to be renewed, and a new lease executed by the chief lord; the new lease shall be valid without the surrender of the under-leases, and the same rents and duties, and the like remedies, shall be had as if the former lease had been continued.”

Renewal of lease.

By 4 Geo. 2. c. 28. “ bodies politic and corporate shall have the like remedy by distress for rent as other persons.”

Bodies politic.

Also a mortgagee after having given notice of the mortgage to the tenant in possession, under a lease granted previous to the mortgage, being entitled to the rent due at and after the time of such notice given, may make distress for the same. *Dong. 279. 266.*

Mortgagee.

An annuitant having a term for years vested in him, to secure the payment of the annuity, may distrain for arrears of the annuity; for the grantor of the annuity is, during the term, a mere under-tenant to the grantee. *2 Black. Rep. 1326.*

Annuitant.

The lord of the manor may distrain of common right; for all services arising from the tenure, as homage, fealty, rent, suit at court; and the like; but distress for *suit or services*, cannot be sold but only impounded till satisfaction made, or the right of distraining be contested by replevin.

*Gib. Dift. 2. 3 Black. Com. 13.*

Lord of manor in respect of copyhold.

The services or rent for which the lord may distrain, must be *certain*, or such as may be reduced to a certainty, otherwise the lord cannot recover damages for non-payment or non-performance, for a jury cannot determine the damage he has sustained. *Co. Lit.* 96.

As to heriots.

As to heriots, they being of two sorts, *heriot-service* and *heriot-custom*, there is this distinction; a *heriot-service* being due on a special reservation, and therefore little different from a mere *rent*, may be either seized or distrained, but a *heriot-custom* being no reservation, but depending intirely upon usage and custom, cannot be distrained. *Co. Cyp.* 24.

The tenant must be *owner* of the heriot, or it cannot be due, therefore no heriot can be taken on the death of a feme covert, for she cannot be owner of any personality, which a heriot is. *4 Leo.* 239.

Who cannot distrain.

A lessee assigning his term cannot distrain for rent, because the reversion is not in him. *2 Wilf.* 375.

A person having a fee farm rent cannot distrain for it, unless the case be within the flat. *4 Geo. 2. c. 28. § 5. Doug.* 624.

## 2. Of what things Distres may be taken, and of what not.

Of what distress may be taken.

It may be said in general, that distresses may be taken of all goods and chattels personal, found on the premises demised; and that, whether they be the property of the tenant or of a stranger; for great delay and fraud might be suffered by the landlord, if he were obliged first to prove that the goods actually belonged to his tenant, or to refute every claim made upon them by others, before he could take them in distress (a). Our shortest way therefore will be to enquire, what things, by the policy of the law, are excepted from this rule, and therefore *not* distrainable, than to enumerate all the individual things which *are*: it may be proper, however, just

(a) If the goods be the property of a stranger, he has his remedy over against the tenant, by an action on the case, if they are *not* forthcoming when called for.

to notice some things, that though distrainable now, were not so at the common law.

And first, corn in sheaves, or hay in cocks, or in a barn, could not at common law be taken in distress for rent; because a distress being formerly considered merely as a *pledge*, to be detained till satisfaction made, nothing could be distrained, which from its nature could not be returned again to the owner in the same state as when it was taken; and corn in sheaves, or hay in the cock, cannot be removed without some loss or damage.

But this exemption having been found to encourage tenants to withhold their rent, it was provided by stat. 2 Will. 3. c. 5. "That it shall be lawful for any person having rent in arrear on any demise, lease, or contract, to seize any sheaves or cocks of corn, or corn in the straw, or hay lying upon any part of the land charged with such rent, and to detain the same in the place where it shall be found, in the nature of a distress, until the same shall be reprieved or sold."

Neither could corn, &c. *growing* be distrained till lately, because of the rule of law, that nothing can be taken in distress, which is so fixed to the freehold, as to become as it were a part of it: but by stat. 11 Geo. 2. c. 19. it is enacted, "That every landlord may take as a distress for arrears of rent, all sorts of corn, or other products whatsoever, which shall be growing on any part of the demised premises; and the same may lay up, when ripe, in the barn or other proper place on the premises so demised or holden."

And by the same statute it is provided, that a landlord may distrain for arrears of rent any cattle or stock of his tenant, depasturing upon any common appendant or appurtenant to the premises demised.

We now proceed to enumerate such things as are exceptions from the general rule we have before laid down, and therefore *not* distrainable for rent arrear.

And 1. As every thing which is distrained is presumed to be the property of the tenant, it follows that such things

Things not distrainable at common law, but made so by particular statutes.

Corn, &c. in sheaves.

Cattle on commons.

Things still exempted from distress for rent.

wherein no man can have an absolute or valuable property, are not distrainable.

Animals of a wild nature.

Therefore dogs, cats, hares, rabbits, poultry, fish, or other things *feræ naturæ*, are exempt from distress (a). *Co. Lit.* 47. 2 *Inst.* 133.

Things in the way of trade.

Such things as are on the premises, in the way of the tenant's trade, as horses in a smith's shop, or in a common inn; corn at a mill to be ground; materials in a weaver's, or cloth and garments in a taylor's shop; these things being protected for the general benefit of trade (b). *Co. Lit.* 47. *Dy.* 312. 4 *Term Rep.* 569.

Things at an inn.

The cattle and goods of a guest or traveller at an inn, are free from distress (c). 3 *Bur.* 1497.

Implements of a man's trade.

So the tools and implements of a man's trade, as the books of a scholar, the axe of a carpenter, the loom of a weaver, and the like, are generally held to be privileged from distress (d), as taking these would not only prevent him from serving the public in his station, but deprive him of the means by which alone he might be enabled to discharge the sum for which the distress was made. *Noy. Max.* 66.

But since the nature of a distress has been altered by the various statutes empowering a sale of the things distrained, this rule is in some degree relaxed; and it has been held by a very late and respectable decision, that the implements of a man's trade are no longer privileged than while he is actually using them; and so long as there is other sufficient distress on the premises: and it was at the same time held that beasts of the plough are protected only under the same circumstances. 4 *Term Rep.* 565.

(a) But deer kept in a private inclosure are distrainable, as being reduced to a kind of valuable stock. 3 *Black. Com.* 7.

(b) On a like principle it is said that *sheep* cannot be distrained whilst any other distress is to be had. 2 *Inst.* 133.

(c) But this privilege does not extend to horses or carriages at liberty, or cattle agisting. 3 *Bur.* 1498.

(d) But though not distrainable for *rent*, they may, under 43 *Eliz.* r. 2, be distrained for poor rates. 2 *Shaw.* 127.

Things

Things which could not, at the common law, be restored again in the same plight in which they were taken, as milk, fruit, and the like, are generally held to be free from distress; but though I know of no express decision against this rule, I should doubt whether it would be now regarded; for since distress is authorized to be sold, the former reason no longer now applies.

Things fixed to the freehold cannot be distrained, as chimney-pieces, anvils, mill-stones, &c. because they are part of the inheritance: nor a mill-stone, even though removed from the mill, if it be removed for some *necessary* purpose, as to be picked, &c. for it still continues part of the mill; and so it is of a smith's anvil on which he works, for it is accounted part of his forge, though it be not actually fixed to the shop. *Co. Lit.* 47. *4 Term Rep.* 565. *Bro. Distr.* 23.

What is in the actual use of another cannot be distrained; for a distress, which is in the nature of a pledge, cannot be made of those things which cannot be reduced into the possession of the person distraining; therefore, the horse a man is riding, the tool a man is working with, and the like, are for the time privileged by law. *Co. Lit.* 47. *1 Vent.* 36. *4 Term Rep.* 569.

Upon the principle at common law that whatever is distrained must be restored to the owner again, in the same condition as when taken, it seems that milk, eggs, and perishable fruits cannot be distrained. *3 Black. Com.* 10. *Sed. vid.* *Bisset v. Caldwell et al. at Ni. Pri. K. B. Hil. Term 31 Geo. 3.*

Nor can money unless it be in a bag, so that the same individual pieces may be restored on the redemption of the pledge distrained. *2 Bac. Ab.* 109.

Goods in execution, cattle impounded for damage feasant, &c. cannot be taken in distress, because they are already in the custody of the law. *Gib. 38.*

Beasts of a stranger found on the premises of a tenant, are distrainable or not, according to the following distinctions:

If the cattle break through the fences and commit a trespass by coming upon the land, and this by default of the owner, they are distrainable immediately for the tenant's rent, as a punishment to the owner for the wrong committed through his negligence. 1 Raym. 168.

And so if they be turned in with the consent of the owner. Cro. Eliz. 549. 2 Vent. 50.

But in the case of the cattle's breaking through the fences, if it happened from the tenant's fault repairing the hedges which it was his part to repair, the landlord cannot distrain them until they have been levant and couchant, i. e. one night at least upon the land, unless he has given notice to the owner, and he suffers them to remain there; for if the landlord had had the lands in his own hands, he must have repaired the fences; and when he puts in a lessee, he ought, by covenant, to oblige him to repair, and therefore to allow the landlord to distrain them would in effect be permitting him to take advantage of his own negligence.

2 Lutw. 1573.

And by Treby, C. J. Raymond 168. where cattle escape accidentally, there they are not distrainable till they have been levant and couchant, but if they escape by default of their owner, they are distrainable the first minute.

### 3. Of the Time and Manner of taking Distress.

When distress to be taken;

not till the day after the rent reserved;

nor after ten-  
days.

Distress for rent must be in the day-time, for if made at night it will be bad. Co. Lit. 142.

It cannot be made, therefore, till the day after that on which the rent is reserved in the lease; for we have before seen, that though payable, it is not strictly due till midnight of the day upon which it is reserved.

Distress cannot be made after the rent has been tendered: if the landlord come to distrain, the tenant may, before the distress made, tender the arrears, and if the distress be afterwards taken, it is illegal; and so if after the distress, and before it is impounded, the tenant tender payment, the land-

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lord ought to deliver up the distress; and, if he do not, the detainer is unlawful. 2 *Inst.* 107.

By stat. 8 An. c. 14. distress is not confined to the duration of the tenant's lease, but may be made at any time within six months after it expires, so that the tenant be in possession of the premises demised, and the landlord's title to them continues.

The landlord ought to distrain for the whole rent at one time, and not part at one time, and part at another, if there be sufficient at first; and formerly, if he took too little the first time, he could not distrain again, because it was his folly not to distrain sufficient in the first instance. 2 *Lutw.*

1532.

But by 17 Car. 2. c. 7. if there is not sufficient distress on the premises, or the landlord mistake in the value of the thing distrained, and take too little, he, his executors, or administrators, may take a second distress to complete his remedy.

In affirmation of what was the ancient common law, it was enacted by stat. 52 Hen. 3. c. 15. that it should be lawful for no man, for any manner of cause, to take distresses *out of his fee*, or in the king's highway, or in the common street, but only the king and his officers, having *special* authority so to do (a).

But by stat. 11 Geo. 2. c. 19. landlords may seize as a distress for rent, any cattle or stock belonging to their tenants feeding upon any common appendant or appurtenant to any part of the premises demised.

And though such goods and chattels only as are found upon the land when the distress is made are properly liable for the rent, yet, if the tenant, seeing his lord coming to distrain, drives his cattle off the land, the landlord may follow and distrain them out of the fee, so that he had once a view

(a) Though a landlord distrain off his fee, or on the highway, the distress is not absolutely unlawful, or void, only the tenant may bring an action against him for so doing, on the above statute.

May be made within six months after expiration of lease.

Landlord ought to distrain for the whole at once.

But may distrain again.

Cannot distrain out of his fee, or in the highway;

unless in particular cases.

of

of them upon the land; for the tenant cannot by his own wrong prevent the landlord of his right. 2 Inst. 132.

As to concealing  
goods, &c.;

And now by 11 Geo. 2. c. 19. "If any tenant for life, or otherwise, of any mesuages or other hereditaments, upon the demise whereof any rent is reserved, shall fraudulently convey away from such premises his goods or chattels, to prevent the landlord from distraining, it shall be lawful for every landlord or lessor, (in England) or any person by him lawfully authorized, within the space of 30 days next after such goods shall be so conveyed away, to dispose of the same, as if they had been distrained upon the premises; unless such goods be not *bona fide* sold before such seizure.

or removing  
them.

" And if any tenant or lessee shall fraudulently remove or conceal his goods as aforesaid, every person so offending or assisting in so doing shall forfeit to the landlord double the value of the goods.

" And when the goods or chattels so carried off or concealed shall not exceed the value of 50l. the landlord, &c. may make complaint against such offender, before two justices of the peace of the county, who shall adjudge the aforesaid penalty; and in case the offender shall neglect to pay it, the same may be levied by *distress and sale* of the goods and chattels of the offender."

Landlord may  
break open  
doors.

By the common law no person was allowed to break open or throw down any gates or inclosures to make a distress; and the lessor could not, in any case, have entered into the house, or even barn of his tenant, for the purpose of making a distress, unless the outer door had been open.

But now, by stat. 11 Geo. 2. c. 19. on oath made before a justice of the peace, of a reasonable suspicion, that goods are concealed in any house, or place, fastened to prevent their being taken in distress, it shall be lawful for the landlord, or other person authorized to take a distress for rent, (calling to his assistance the constable or other peace officer of the parish or place where the same are suspected to be concealed), to break open in the day-time, and enter into

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any such house, &c. and seize such goods, &c. for rent arrear, in like manner as if they had been in any open field or place.

If a landlord seize only a part of the goods, &c. of his tenant for rent, in the name of them all, it will be a good seizure of the whole. *6 Mod. 215.*

May seize part in the name of the whole.

Distresses ought not to be excessive, but in proportion to the duty distrained for. *2 Inst. 106.*

Distress must not be excessive.

If a distress and sale be made, as for rent in arrear, and it turn out that none be due, the owner may, by *2 Will. & Mary, c. 5.* recover double the value of the goods distrained, with full costs.

Unlawful distress.

And if a distress be made without cause, or contrary to law, as if it be taken on the highway, &c. the owner may at any time before it is impounded rescue it, but if it be once impounded he cannot take it, because it is then in custody of the law. *C. Lit. 47. 1 Raym. 105.*

One distress cannot be taken for rent due on *several demises*, but a separate distress on the premises subject to the rent, must be made for the particular rent due on each. *2 Stra. 1040.*

One distress cannot be taken for several rents.

The many particulars which attend the taking of a distress, formerly rendered it a hazardous proceeding, for if any one irregularity was committed, the whole process was void, and the parties trespassers from the beginning: to remedy which, it was provided by *stat. 11 Geo. 2. c. 19.* that "Where any distress shall be made for rent justly due, and any irregularity or unlawful act shall be afterwards committed by the party distraining, or his agents, the distress itself shall not on that account be deemed unlawful, nor the party a trespasser from the first, but the person aggrieved shall recover full satisfaction for the special damage sustained by such irregularity, and no more, with full costs of suit."

Distress not unlawful tho' irregular.

4. *How a Distress is to be disposed of.*

How distress to be used.

After distress is taken, the first thing to be done by the distrainer is to impound, or secure in some place of safety, the goods, or other things distrained.

At common law, the distrainer might have impounded the distress wherever he chose, whereby it often happened that the owner was at a loss where to find his goods or cattle either to feed or replevy them; 2 Inst. 106. to remedy which inconvenience,

Distress cannot be driven out of the county.

By stat. 1 & 2 Will. and Mar. it is enacted, that no distress of cattle shall be driven out of the hundred, rape, wapentake, or lathe where the same were taken, except to a pound overt within the same shire, and within three miles of the place where taken, and no distress shall be impounded in several places (a). And,

May be impounded and sold on the premises.

By 11 Geo. 2. c. 19. which was made for the benefit and convenience of landlords, it is provided, that "it shall be lawful for any person making distress for rent, to impound the same on such part of the premises as shall be most convenient, and dispose thereof upon the same, in like manner as he may do off the premises, by virtue of the several acts already in force."

Open pound.

If the distress be of cattle or other living things, and they be impounded in a common open pound, the tenant is bound to take notice of them, and feed them at his peril, but if in a pound constructed for the purpose, the distrainer must give notice to the owner where the distress is, and in either case the owner must provide them with food: but if they be impounded in a close, or covered pound, as a stable, or the like, then must the landlord or person distraining provide them with necessaries. Co. Lit. 47.

(a) It has been held on this statute, that where lands lay in two adjoining counties, and were under one demise, at one entire rent, cattle taken in distress on both lands, might be driven together into one of the counties. 1 Raym. 55.

And they must be put in the same pound. 4 Mod. 395.

Household goods, and such other things as would be covered pound. damaged by the weather, must be impounded in an inclosed covered pound, otherwise if they be damaged, the distrainer will be answerable for the loss. *1. Inst. 47.*

Cattle or other things must not be used or worked whilst in distress, unless it be for the benefit of the owner that they should. On this account it has been doubted whether a distrainer might milk a cow, because, though the cow ought to be milked, yet the owner might have come before she had been injured. *Cro. Jac. 148. 2 Bac. Ab. 112.*

Distress must not be used.

If the distresses die, or be damaged in the pound, without any default of the distrainer, he may make a fresh distress. *Distress lost.*

*1 Salk. 248.*

By stat. 2 Will & Mar. c. 5. if the distress, after being impounded, be rescued, any person aggrieved thereby may recover treble damages and costs against the offender, or against the owner of the goods, if they be afterwards found to come to his use or possession; and it has been held on this statute that the costs shall be trebled as well as the damages. *1 Raym. 20.*

Rescue of distress.

If after distress made of cattle, &c. they get away from the driver in going to pound, and return to the owner, the owner must re-deliver them on demand, or it will be construed to be a rescue. *C. Lit. 161.* *Escape.*

Formerly nothing more could be done with things taken in distress for rent (except in the case of the king, and some few other instances) but to detain them in the pound till the rent was paid. But this being frequently found to be unavailing,

By 2 Will. & Mar. it is provided that where any goods or chattels shall be distrained for rent due on any demise, lease, or contract whatsoever, and the owner shall not, within five days next after such distress taken, and notice thereof (a), and of the cause of the taking left at the dwelling house, or other most notorious place on the premises charged with the rent, *replevy* the same, that then,

Distress may be sold if not replevied.

(a) A personal notice is sufficient under this statute. *12 Mod. 76.*

at the expiration of the said five days, the distrainer may (with the assistance of the sheriff, under-sheriff or constable), cause the goods and chattels so distrained to be *appraised* by two sworn appraisers, and sold for the best price that can be got for the same, towards satisfaction of the rent for which the said goods and chattels shall have been distrained; and the costs and charges of such distress, appraisement, and sale, leaving the overplus, if any, in the hands of the said sheriff, or constable, for the use of the owner.

5. *How a Distress may be replevied or avoided.*

Replevying a distress.

If a distress be taken wrongfully, or without sufficient cause, the tenant, or owner, may by virtue of stat: 52 Hen. 3. c. 21. (commonly called the statute of Marlbridge) apply to the sheriff, or his deputy, who shall grant him a replevin, or restitution of the goods distrained, upon his giving bond with two sureties in double the value of the goods, to try without delay the right of distraining, and to restore the same, in case it should be determined against him: when therefore the sheriff, or his deputy, have received such sureties, they are bound to cause the things distrained to be immediately restored to the possession of the owner.

If the tenant mean to replevy the goods distrained, he must accordingly, within five days after notice given him of the distress, go with two housekeepers to the sheriff's office, or if in the country to a person whom the sheriff has authorized to grant replevies, and enter into such bond, upon which the sheriff will direct a precept to one of his bailiffs, that the goods may be restored to the tenant, to wait the event of the suit in replevin (a).

(a) It has been held that goods which have been taken abroad are not repleviable, though afterwards brought into England by the defendant. 1 *Show.* 91.

6. *Practical*

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## 6. Practical Directions in making a Distress.

The proper and regular way of making a distress for rent in arrear is, to go upon the premises for which the rent is due, and take hold of some piece of furniture, or other article there, and say, (*if the distress be made by the landlord himself*), "I seize this chair (or other thing, as the case may be), in the name of all the goods and effects on these premises, for the sum of £. 20, being half a year's rent due to me at *Lady-day last*." (*Or if the distress be made by some person empowered by the landlord*), say, "for the sum of £. 20 due to *James Frazer, esq.* the landlord of these premises, at *Lady-day last*, by virtue of an authority (a) from him the said *James Frazer*, to me given for that purpose."

An inventory (b) is then to be made of so many of the goods, &c. as will be sufficient to cover the rent and expences of the distress, appraisement and sale, and with a notice thereto annexed served on the tenant.

The goods may then be immediately removed, which is the safest way, unless the tenant consents to let a man remain in possession of them upon the premises, and then they may remain till the seventh day, when they must be removed, appraised, and sold, or the distrainer will be a trespasser, unless the tenant requests and the landlord agree that still further time be given for payment, in which case the tenant must sign a memorandum, consenting to the landlord's continuing possession longer (c).

If no further time be allowed on the seventh day, and the goods are not replevied, the landlord is to go to the place where the goods are impounded, and if the rent and charges are not then paid, the sheriff, or constable, with two sworn brokers must attend, and having viewed the goods dis-

(a) See the form of this authority, *Appendix*, No. VII.

(b) See the form of this inventory and notice, *Appendix*, No. VII.

(c) See the form of this consent, *Appendix*, No. VII.

trained, the sheriff or constable must administer an oath to the appraisers to the following effect, " You, and each of " you, shall well and truly appraise the goods and chattels mentioned in this inventory, (*holding the same in his hand*) according to the best of your judgment."

Then write a memorandum thereof on the back of the inventory, as in *Appendix*, No. VII.

When the appraisers have valued the goods, and an indorsement of their valuation is written upon the back of the inventory, as in *Appendix*, No. VII. the goods are to be sold, and the surplus of the money arising from the sale, after deducting the arrears of rent, and all reasonable charges attending the distress, is to be paid to the tenant.

#### *Of Ejectment for Recovery of Rent Arrear.*

3.  
By ejectment.

Ejectment is an action by which lands or tenements may be recovered against him who has unlawful possession of them; originally it lay only against a lessor, reversioner, or stranger, who ousted (i. e. turned out) a tenant from the occupation of land demised to him, during the continuance of his term, but now by a string of legal fictions it is applicable to many other purposes; and by 4 Geo. 2. c. 28. is rendered an easy and expeditious remedy to landlords for recovery of rent in arrear.

By this statute it is enacted, "that in all cases between landlord and tenant as often as one half year's rent shall be in arrear, and the landlord has right by law to re-enter for non-payment, and no sufficient distress is to be had; such landlord may, without any formal demand, or re-entry, serve a declaration in ejectment for recovery thereof; or in case the same cannot be legally served, or no tenant be in possession, affix the same upon the door of any demised messuage, or upon some notorious place of the land, tenements, or hereditaments, comprised in such declaration, which affixing shall be deemed legal service thereof, and shall stand instead of a legal demand and re-entry; and a recovery in such ejectment shall be final and conclusive, both

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at law and in equity, unless all arrears of rent with full costs be paid, or tendered within six months thereafter.

“ Provided that if the tenant, before the trial in such ejectment, pay or tender to the landlord, or pay into court all rent in arrear and costs, all further proceedings shall be void.”

*N.B.* A landlord must not receive any rent of his tenant after he has brought an ejectment, till the same be determined; if he do, it will be a waiver of the action, and he will be nonsuited. 2 *Bur.* 668.

To enlarge any farther upon this species of action, *Observations*, which consists of many nice and intricate points of practical law, we think unnecessary and useless. In the present treatise we profess to instruct our readers as to those points only, in which, with our assistance, he may safely act for himself; but when we approach to those matters which professional men are alone competent to undertake, to them it is our duty to direct him, as the only guide on which he can with safety depend.

## CHAP. IX.

*Miscellaneous Observations, Cautions, and Directions  
as to the Hiring and Letting of Houses and Apartments  
in London, and elsewhere.*

THE numerous frauds and deceptions which are daily practised by designing persons, in letting houses or apartments, particularly in the neighbourhood of the metropolis, has induced us to conclude this *first part* of our enquiries with a chapter on that subject, where we shall endeavour to call to mind such directions and cautions as appear to us to be most generally necessary and useful.

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In

Cautions in taking houses, &c.

In taking a house, a person should carefully examine the covenants in the original lease, and also those in the under-lease, if any, or he may possibly find, when too late, that he is tied down by such restrictions as to render the house unfit for his purpose, or likely to involve him in unforeseen difficulties:—he may be restrained from making convenient alterations;—be compellable to rebuild in case of fire, or other accident;—liable to forfeit his lease, or a penalty if he attempt to assign over his interest, &c. &c.

It becomes him also to see that the rent reserved in the original lease, as also the ground rent, and all taxes are paid up to the time he commences possession; for if they are not, he will be obliged to pay all arrears, and can recover them only by having recourse to the last tenant, who, perhaps, is not to be found, or may be unable to repay him.

The same caution is necessary in taking unfurnished lodgings, for if the rent of the house be in arrear, either then or at any subsequent period, the furniture of the lodger will be liable to be taken in distress (a). *Vid. ante.* Chap. VIII.

In purchasing a lease of a tenant, care should be taken (by examining the lease and inventory) that fixtures, and other things belonging to the premises, are not paid for together with those belonging to the tenant, for it is not unusual for a landlord to fit up his house with all necessary fixtures and conveniences, in which case they are included in the rent of the house, and not to be paid for separately (b): if, however, the fixtures have been put up by the tenant, he may remove and consequently sell them, as we have seen, page 23.

It is almost needless to add, that care should be taken that the lease or other conveyance be properly drawn and ex-

(a) Carriages or horses standing at livery are also seizable for the rent of the stables and premises.

(b) Goods and fixtures are generally taken by appraisement. In this case the seller and buyer each appoint a sworn appraiser; if they disagree, a third is called in by them, whose decision is final.

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cuted according to the rules and observations laid down in the various parts of the present treatise.

These we deem to be the principal cautions requisite to be observed by those who may have occasion to take an house or lodgings: they are every where highly proper, but peculiarly necessary in the metropolis, where so many needy and artful people are always on the watch to take in the ignorant and unwary.

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We here finish our considerations on the laws respecting landlords and tenants, and we hope they will be found useful. Upon a subject that comprises so many heads, on some of which discordant opinions are met with, it is difficult to be in all respects accurate; we trust however the attention we have paid to our subject has prevented our being otherwise in any material instance.—The next subject of our enquiries will be the laws relating to *wills* and *testaments*, and the office and duties of *executors* and *administrators*; these will be treated of on a plan similar to that of the present treatise, and will compose the *second* division of our intended work.

Conclusive obser-  
vation.

## A P P E N D I X

### Of PRECEDENTS.

#### N<sup>o</sup> I. AGREEMENTS.

1. Memorandum of an Agreement for letting a First and Second Floor, Garret, and Kitchen, unfurnished (a).

**M**EMORANDUM, That it is hereby declared and agreed by and between *John Fenton*, of *Devonshire-Street, Queen-Square*, in the county of *Middlesex*, engraver, and *Charles Danvers*, of the *Inner Temple*, gent. in manner following; that is to say, That the said *John Fenton* hath agreed to let, and hereby doth let, and the said *Charles Danvers* hath agreed to take, and hereby doth take all that the first and second floor, front garret, and front kitchen, with the conveniences and appurtenances thereto belonging, of the house now in the occupation of the said *John Fenton*, situated No. 20, in *Devonshire-Street* aforesaid, together also with two cellars adjoining to each other under the pavement of the said street, and to the said house belonging, TO HOLD the same with their appurtenances, and the sole and uninterrupted use and occupation thereof unto the said *Charles Danvers*, his executors, administrators and assigns, for the term of twelve calendar months, to commence from the twenty-fifth day of March now next ensuing, at the net yearly rent of thirty-six pounds for the year, payable quarterly on the twenty-fourth day of July, the twenty-fifth day of September, the twenty-fifth day of December, and the twenty-fifth day of March thence next ensuing; and the said *John Fenton* doth agree to paint the second floor of the said demised premises, and have the same fit for occupation by the said twenty-fifth day of March next, or as soon thereafter as may be, and the said *Charles*

(a) This agreement, being signed only by the parties, and not sealed, must be written upon a 6s. Agreement stamp.

N. B. By 23 Geo. 3. c. 58. every agreement, whether obligatory on the parties, or only evidence of a contract, shall be impressed with a 6s. stamp, except agreements for leases at rack rent, under the yearly value of £. 5. agreements for the hire of labourers, &c. for the sale of goods; for matters not exceeding the value of £. 20. and agreements in *Scotland*.—It is not necessary that it should be stamped before it be signed by the parties; if it be done within twenty-one days after it will be equally good.

*Danvers*



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Danvers doth engage to make punctual payment of the rent hereby referred, in the manner aforesaid, and to quit and leave the said hereby demised premises at the expiration of the said term of twelve months (notice to quit being given the said *Charles Danvers* at least three calendar months previously thereto) in as good state and condition as reasonable use and wear thereof will permit. As witness our hands this second day of March, one thousand seven hundred and ninety-three.

*John Fenton.*  
*C. Danvers.*

Witness, (a)  
James Bryant. } Servants to Mr. Fenton.  
Wm. Day.

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2. *Memorandum of Agreement for letting a First Floor and Garret, furnished, for Half a Year certain, and from Quarter to Quarter, as long as the Parties shall agree (b).*

MEMORANDUM made this second day of June, 1794, between *Abraham Potts*, of &c. and *Christopher Doe*, of &c. as follows: the said *Ab. Potts* doth let unto the said *Christ. Doe* an entire first floor completely furnished, as the same now is, (which furniture is particularly mentioned in a schedule hereunder written), being part of the house which he the said *Ab. Potts* now lives in, situate and being in *King-Street, Bloomsbury*; TO HAVE AND TO HOLD the said premises for and during the term of half a year, to commence from Midsummer-day next ensuing, at and after the rent of fifty pounds per annum, of lawful monēy of Great Britain, payable quarterly, by even and equal portions, the first quarterly payment thereof to be made on Michaelmas-day next ensuing the date hereof. AND IT IS FURTHER AGREED by and between the parties hereto, that the said *Christ. Doe*, after the expiration of the said term of half a year, may hold and enjoy the said premises hereby let unto him, from quarter to quarter, so long as both parties shall agree, at the same rent as aforesaid. AND IT IS ALSO FURTHER AGREED between the parties, that when the said *Christ. Doe* shall quit the said premises hereby demised to him, he shall and will leave the furniture and other things mentioned and set forth in a schedule, or inventory thereof hereunder written, in as good state and condition as the same now are, reasonable and

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(a) One witness is sufficient to attest the execution of every species of deeds, though in practice it is usual to have two.

(b) This must be written on a 6 s. Agreement stamp.

proper use thereof only excepted. As witness our hands the said second day of June, one-thousand seven hundred and ninety-four.

Witness,  
Wm. Simpson.

Ab. Potts.  
Christ. Doe.

*An Inventory to which the above Agreement refers.*

In the front room, one pair of stairs.

- 8 Mahogany chairs with hair bottoms
- 1 Mahogany dining table
- 1 Pembroke table
- 2 Fire-screens
- 3 Festoon cotton window curtains
- A wilton carpet, 3 yards by  $2\frac{1}{2}$

In the Back Room, ditto.

A four-post bedstead and bed, cotton furniture, white counterpane, 2 blankets, 2 pair sheets and mattrass. (and so on as the case may be).

Witness,  
Wm. Simpson.

Ab. Potts.  
Christ. Doe.

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3. *An Agreement for a Lease of a Piece of Ground and Orchard, for the Term of five Years (a).*

MEMORANDUM made this tenth day of December, in the year of our Lord one thousand seven hundred and ninety-four, between *John Sykes*, of *Eling*, in the county of *Surry*, gent. and *William Fleet*, of the same place, gent. as follows: that is to say, The said *John Sykes* in consideration of the rent and agreements hereinafter mentioned, doth agree to demise and let, by a good and sufficient lease in the law thereof, unto the said *William Fleet*, on or before the day of now next, ALL that field, piece, or parcel of meadow ground, containing by estimation six acres, more or less, situate at *Eling* aforesaid, now in the occupation of the said *William Fleet*, as tenant at will thereof, adjoining to a house and grounds now or late of *Peter Mellifb*, esq. and also all that orchard adjoining to the aforesaid field, containing by estimation two acres, more or less, late in the occupation of *Humphry Nichols*, gardener, together with all ways, paths, passages, waters, water-courses, easements, privileges, and appurtenances whatsoever, to the same belonging or

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(a) This must be written on a 6s. Agreement stamp.

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appertaining, or therewith held, used, occupied, possessed, or enjoyed, reputed, taken or known as part, parcel, or member thereof, or of any part thereof, TO HOLD the same for the term of five years from Lady-Day last past, at and under the yearly rent of twenty pounds, payable quarterly; the first payment thereof to be made at Midsummer now next ensuing the date thereof; and by the said lease full and free liberty shall be granted unto the said *William Fleet* to lop and plash the trees and hedges on the said demised premises, at seasonable and convenient times, and also liberty to erect upon the same any shed or sheds, or other convenient buildings during the said term, he the said *William Fleet*, from time to time scouring and cleansing the ditches, and repairing and making good the fences, hedges, and gates, upon and belonging to the said premises, AND the said *William Fleet* doth agree to take the aforesaid premises for the said term, and at the said rent, payable in manner aforesaid, and to execute a counterpart of the lease to be thereof granted. In witness, &c.

Witness,  
Giles Moon.

John Sykes.  
Wm. Fleet.

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4. *An Agreement between a Landlord and Tenant for building a new House in the room of an old one to be pulled down,—the present Lease to be surrendered, and a fresh one granted for the remainder of the subsisting Term (a).*

ARTICLES of agreement entered into this fourteenth day of February, in the year of our Lord one thousand seven hundred and ninety-four, BE TWEEEN Robert Kent, and John Key, of Cecil-Street, in the Strand, esquires, (executors and trustees named in the last will and testament of Richard Comins, late of the same place, esquire, deceased, for and on the behalf of Roger Comins, an infant), of the one part, and Elizabeth Manners, of Sloane-Street, in the county of Middlesex, widow, of the other part.

WHEREAS the said Elizabeth Manners is tenant for the remainder of an unexpired term of thirty-one years, commencing on the twenty-fifth day of December, which was in the year one thousand seven hundred and eighty-one, of a certain mesuage, or public house, known by the name of the Goose and Gridiron, in Harpur-Street, in the said county of Middlesex, (part of the estates of the said infant), at the net yearly rent of twenty-four pounds, late in the occupation of Thomas Ball, as under-tenant of the said Eliza-

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(a) This agreement being under the *seal* of the parties, must be written on a 6s. Deed stamp.

*Elizabeth Manners*, at the net yearly rent of forty pounds. AND WHEREAS the said messuage has lately been irreparably damaged by accidental fire, and the said *Robert Kent* and *John Key* being advised that it is necessary and proper under the circumstances of the case, the same should be rebuilt for the said *Elizabeth Manners*, on the terms and conditions herein after mentioned, have agreed to rebuild the same accordingly. Now WITNESS these presents, that it is hereby agreed by and between the said *Robert Kent* and *John Key*, on the part of the said infant as aforesaid, and the said *Elizabeth Manners*, that they the said *Robert Kent* and *John Key*, or the survivor of them, his heirs, executors, or administrators shall and will, on or before the twenty-fifth day of December now next ensuing, or as soon thereafter as may be, erect and finish, or cause to be erected and finished, a good and substantial private brick dwelling house, upon the scite, and in the room of the said public house so damaged by fire as aforesaid, with all necessary appurtenances thereto, agreeably to a plan and elevation thereof accompanying these presents, marked with the letter A, and signed by the parties hereto, (the said house so to be erected, to be finished as to the inside conveniences, ornaments, and decorations thereof, according to the directions of *Henry Hammond*, of *Sloane-Street* aforesaid, on the part of *Elizabeth Manners*, her executors, administrators, or assigns, and *Philip Norman*, of *Caville-Street, Holborn*, on the part of the said *Robert Kent* and *John Key*), and also shall and will, when the said house with the appurtenances shall be so erected and finished, grant a good and effectual demise or lease thereof unto the said *Elizabeth Manners*, her executors, administrators, and assigns, TO HOLD unto the said *Elizabeth Manners*, her executors, administrators, and assigns, from the said twenty-fifth day of December now next ensuing, or such other time as aforesaid, for the term of nineteen years thence next ensuing, at and under the yearly rent of five pounds for every one hundred pounds, which shall be necessarily and reasonably expended by the said *Robert Kent*, and *John Key*, or the survivor of them, his heirs, executors, or administrators, in erecting and finishing the same, fit for the reception and habitation of the said *Elizabeth Manners*, or her assigns, and which rent is to be clear of all manner of taxes and assessments whatever, land-tax only excepted: the amount of such expenditure to be ascertained and settled by the said *Philip Norman* on the part of the said *Robert Kent* and *John Key*, and the said *Henry Hammond* on the part of the said *Elizabeth Manners*, or such other persons being builders or surveyors, as the said *Robert Kent* and *John Key*, on the one part, and *Elizabeth Manners*, on the other, shall severally appoint, and in case of difference between the said builders or surveyors, then by one other person or umpire, to be by them appointed, the determination in either case to be made by the said appointees, or umpire, within fourteen days after reference to them made, the said rent to be paid and payable

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half yearly, on the days and times whereon the rent in the now subsisting lease of the said *Elizabeth Manners* is reserved. And the said *Elizabeth Manners*, for herself, her executors, administrators, and assigns, doth consent and agree to accept and take the said house and premises so to be erected and finished as aforesaid, on the terms and conditions before mentioned, and to execute a counterpart of the lease to be to her and them granted thereof, and to surrender and give up her said now subsisting lease, and all her estate and interest therein. AND it is further agreed between the said parties, that the said *Elizabeth Manners* shall be discharged from the payment of rent reserved on her said now subsisting lease, from Michaelmas last until the said twenty-fifth day of December next, or such other time thereafter as the said house so to be erected, shall, with the appurtenances, be in a tenantable condition, and fit for habitation, and in the said lease so to be granted of the said new erected house and premises, there shall be contained an allowance of land-tax in favour of the said *Elizabeth Manners*, and all such other covenants, clauses, provisoies, and agreements (such only excepted as may tend to vary the terms of this agreement,) as are inserted in the now subsisting lease of the said *Elizabeth Manners*.

IN Witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

*Robert Kent.* (Seal.)  
*John Key.* (Seal.)  
*Eliz. Manners.* (Seal.)

Sealed and delivered by the said  
*Robert Kent* and *John Key*, in the  
presence of us

*Peter Simpkins, Temple-Bar.*  
*Samuel Fleet, Great James-Street.*

Sealed and delivered by the said *E. Manners*,  
in the presence of *Henry Jacobs, Sloane-Street, Chelsea.*  
*Samuel Fleet.*

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5. *An Agreement for Tenant to surrender Public House to his Landlord within a given Time, (the said House being at present in Mortgage) (a).*

MEMORANDUM of an agreement made the eleventh day of December, one thousand seven hundred and ninety-three, BETWEEN *Thomas Verts*, now or late of the *Lion and Dog Public House*, in *Carey Street*, near *Lincoln's Inn, London*, and *Elizabeth Matloch*, of *Sloane Street, Chelsea*, in the county of *Middlesex*,

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(a) This must be written upon a 6s. Agreement stamp.  
*Widow,*

Widow, as follows:—The said *Thomas Verts* DOTH hereby covenant and agree to assign and surrender, or procure to be assigned or surrendered unto the said *Elizabeth Matlock*, on or before the twentieth day of January, now next coming, the messuage or tenements, and public house, called the *Lion and Dog*, now or lately tenanted by him in *Carey Street* aforesaid, with the appurtenances (feud and discharged of and from all mortgages and other incumbrances), and all his term, estate, and interest therein. AND the said *Elizabeth Matlock* doth hereby agree to accept the same (all rent and arrears of rent being paid up to Christmas next), and to discharge the said *Thomas Verts* from his covenant to repair the said house and premises. As Witness our hands the day and year above written.

Witness,  
*Thomas Poole.*

*Thomas Verts.*  
*Elizabeth Matlock.*

## N<sup>o</sup> II. LEASES.

### i. Lease of a House in London, with all proper Covenants (a).

**T**HIS Indenture made the first day of January, in the thirty-second year of the reign of our sovereign Lord George the third, by the Grace of God of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth, and in the year of our Lord one thousand seven hundred and ninety-two, BETWEEN *James Fenwick*, of *Dulwich*, in the county of *Surry*, Gent. of the one part, and *Thomas Carr*, of *Fleet-Street*, in the city of *London*, Grecer, of the other part, WITNESSETH that for and in consideration of the yearly rent herein after reserved, and of the covenants, provisos, and agreements herein after contained by and on the part of the said *Thomas Carr*, his executors, administrators, and assigns, to be paid, observed, and performed, he the said *James Fenwick* HATH demised and leased, and by these presents DOTH demise and lease (b) unto the said *Thomas Carr*, his executors, ad-

(a) To be written on a 6s. Deed stamp.—This lease and the next, with the following assignment, are drawn with peculiar neatness and periplicity, and all unnecessary circuncircumlocutions are purposely omitted; they were settled in their present form by an eminent Conveyancer now in practice, who was himself the landlord of the premises.

(b) The words usually inserted in leases are, “ Demise, lease, let, and to farm let.” The third of these words is obsolete, and the last more applicable to a lease of lands.

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ministrators, and assigns, ALL (a) that messuage or tenement and premises, dwelling house, situated and being on the north side of *Fleet-Street*, in the city of *London*, now or late in the occupation of *John Bate*, his under-tenant, assignee, or assigns, and abutting on the east end thereof, on a messuage or tenement, now or late in the occupation of *Thomas Sell*, his assignee, or assigns, and on the west end thereof, on a gate-way leading to certain premises known by the name of the *Swan Inn*, now or late in the occupation of *Elizabeth Cole*, her assignee, or assigns, together with all rooms, vaults, cellars, areas, yards, General verds. ways, pavages, drains, pipes, water courses, advantages, conveniences, hereditaments, and appurtenances whatsoever, to the said messuage or tenement and premises belonging or in any wise appertaining. TO HAVE AND TO HOLD the said messuage or tenement and premises hereby demised, or mentioned so to be, with *Haberdan for 21 years*.

their appurtenances, unto the said *Thomas Carr*, his executors, administrators, and assigns, from the twenty-fifth day of December last past, for and during and unto the full end and term of twenty-one years thence next ensuing, and fully to be complete and ended (determinable nevertheless at the end of the first seven or fourteen years thereof, upon such notice for that purpose being given, as herein-after is mentioned.) He the said *Thomas Carr*, his executors, administrators, and assigns, YIELDING AND PAYING yearly and every year during the said term, for such tenure and occupation of the said premises, unto the said *James Fenwick*, his executors, administrators, and assigns, the *at* yearly rent or sum of fifty pound of lawful money of Great Britain, the same to be paid by *At the yearly rent of 50.* equal quarterly payments on the several days following: namely, on the twenty-fifth day of March, the twenty-fourth day of June, the twenty-ninth day of September, and the twenty-fifth day of December, in every year (save and except at all times during the *exception as to* said term, such proportionable part of the said yearly rent of fifty *fire.* pound, as shall or may at any time or times grow due, during such time as the messuage or tenement hereby demised, shall without the hindrance of the said *Thomas Carr*, his executors, administrators, or assigns, remain uninhabitable by reason of accidental fire), and to be clear of all and all manner of parliamentary, parochial, and other taxes, assessments, rates, and deductions whatsoever; the first quarterly payment thereof to begin and be made on the twenty-fourth day of June next ensuing the date of these presents. AND the said *Thomas Carr* doth hereby for himself, his executors, administrators, (b) and assigns, covenant, promise, and agree to *Covenant from and lessee to pay rent;*

Determinable at  
the end of the  
first 7 or 14  
years thereof.

(a) The description of the premises should be as full and accurate as possible, to prevent disputes, which might else arise as to the extent of the demise.

(b) The present lessor of these premises was himself only lessee of the proprietor of the estate, the tenant therefore covenants with the executors and *admi-*

and with the said *James Fenwick*, his executors, administrators, and assigns, in manner following, (that is to say) that he the said *Thomas Carr*, his executors, administrators, or assigns, shall and will yearly and every year during the continuance of the said term hereby demised (save and except as aforesaid), well and truly pay or cause to be paid unto the said *James Fenwick*, his executors, administrators, or assigns, the said yearly rent or sum of fifty-pounds of lawful money of Great Britain, on the several days, and in the

and taxes, (except land-tax.) manner the same is herein before made payable. AND ALSO

shall and will well and truly pay or cause to be paid all and all manner of taxes, rates, assessments, and impositions whatsoever, parliamentary, parochial, or otherwise (land tax only excepted), which now are, or which shall at any time during the continuance of the said term hereby demised, be rated, taxed, assessed, or imposed on the said demised premises, or on any part thereof, or on the said yearly rent hereby reserved, or any part thereof, or on the

said *Thomas Carr*, his executors, administrators, or assigns, on account thereof. AND ALSO that he the said *Thomas Carr*, his

executors, administrators, and assigns, shall and will at his and their own proper costs and charges, cause to be well and sufficiently

painted, all the outside wood and iron work belonging to the said messuage or tenement and premises hereby demised, every third year

during the continuance of the said term of twenty-one years, and at his and their like proper costs and charges, shall and will at all

times during the continuance of the said term, keep in a good sufficient and tenantable slate of repair as well all and singular the

glafs and other windows, waincots, rooms, floors, partitions, ceilings, tiling, walls, rails, fences, pavements, grates, privies, sinks,

drains, wells, and water courses, as also all and every other the

parts and appurtenances of the said messuage or tenement and premises hereby demised (damages happening by casual fire only excepted,) AND at the end or other sooner determination of the

said term hereby granted, shall and will leave and yield up unto the said *James Fenwick*, his executors, administrators, or assigns,

all and singular the same messuage or tenement and premises, with

every of their appurtenances, in such good, sufficient, and tenantable slate of repair as aforesaid (a). Together with all and every

the doors, locks, keys, bolts, bars, chimney-pieces, dressers, shelves,

water-pipes, and other things mentioned in an inventory or sche-

me and quit at the end of the term;

and leave the premises in good repair, together with the things mentioned in an

inventory.

administrators of the lessor, because they are the persons, who in case of his decease would be entitled to the residue of the term; but had the lessor been owner of the inheritance, the tenant must have covenanted with his heirs and assigns. This observation will apply to all the subsequent covenants.

(a) This covenant is not broken by the ordinary and natural decay of the premises.

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dule hereunder written, or hereto annexed, in as good pligt and condition as the same now are (reasonable use and wear thereof and casualties happening by fire on'y excepted). AND FURTHER that it shall be lawful, for the said *James Fenwick*, his executors, administrators, and assigns, either alone, or with workmen or others, twice in every year (at such times of the year as to him or them shall seem meet) during the said term hereby granted, at seasonable times of the day to enter into and upon the said premises hereby demised, and every part thereof, and there to view and examine the state and condition thereof, notice of *After notice*, such view being at all times previously given unto the said *Thomas Carr*, his executors, administrators, or assigns, one day at least before the same shall take place. And in case any decays or want of reparation be found at any such examination and review, he the said *Thomas Carr*, for himself, his executors, administrators, and assigns, doth hereby covenant, promise, and agree to and with the said *James Fenwick*, his executors, administrators, and assigns, to cause the same to be well and sufficiently repaired and amended within the space of six months after notice thereof in writing shall have been given to him or them for that purpose. PROVIDED ALWAYS, and these presents are upon this express condition nevertheless, that if the said yearly rent or sum of fifty pounds hereby reserved, or any part thereof shall be in arrear and unpaid for the space of twenty-one days next after any of the said days whereon the same is herein before covenanted to be paid as aforesaid (it being first lawfully demanded), or if the said *Thomas Carr*, his executors, administrators, or assigns, shall not well and truly observe and keep according to the true intent and meaning of these presents, all and every the covenants, clauses, proviso's, and agreements, by him and them to be observed and kept, then and from thenceforth in either of the said cases, it shall be lawful for the said *James Fenwick*, his executors, administrators, and assigns, to re-enter into the said hereby demised premises, or into any part thereof in the name of the whole, and the same to have again, re-possess, retain and enjoy, as his and their former estate, and the said *Thomas Carr*, his executors, administrators, and assigns, and all other tenants and occupiers of the said premises, thereout utterly to eject and amove, and that from and after such re-entry made, this lease, and every clause and thing herein contained shall determine and be utterly void to all intents and purposes, any thing herein contained to the contrary thereof in any wise notwithstanding. AND the said *James Fenwick* for himself, his executors, administrators, and assigns, doth covenant, promise, and agree to and with the said *Thomas Carr*, his executors, administrators, and assigns, by these presents in the manner following, (that is to say) that he the said *James Fenwick*, his executors, administrators, and assigns, paying the yearly rent hereby reserved in the manner aforesaid, and performing

Power for lessor to view state of repairs.

Proviso that lessor may re-enter on non-payment of rent, &c.

Covenant from lessor that lessee shall quietly enjoy the demised premises.

free from the original lease whereby the lessor holds.

Covenant for renewal of lease,

and for determination of this present lease at the end of the first seven or fourteen years thereof, at the option of the lessee.

performing the covenants and agreements herein contained, and by him and them to be performed, shall and lawfully may peaceably and quietly hold, occupy, and enjoy the messuage or tenement, and all other the premises hereby demised, for and during the said term of twenty-one years hereby granted, without any lawful action, suit, or interruption of the said *James Fenwick*, his executors, administrators, or assigns, or any other person lawfully claiming by, from, or under him, them, or any of them (a). And that freed and discharged, or otherwise, by the said *James Fenwick*, his executors, administrators, and assigns, saved harmless and indemnified from the rent and covenants reserved and contained in a certain indenture of lease bearing date the tenth day of August, in the year of our Lord one thousand seven hundred and ninety, whereby the said *James Fenwick*, holdeth the said messuage and premises hereby demised from the date thereof for the term of sixty one years, and from all claims and demands whatsoever in respect thereof. AND the said *James Fenwick* doth hereby further covenant, promise, and agree to and with the said *Thomas Carr*, his executors, administrators, and assigns, that the said *James Fenwick*, his executors, administrators, and assigns, shall and will before the expiration of this present lease, on the request, and at the costs and charges of the said *Thomas Carr*, his executors, administrators, and assigns, grant and execute unto him and them a new and fresh lease of the messuage or tenement, and all other the premises hereby demised, with their appurtenances, for the further term of ten years, to commence from the expiration of the term hereby granted, the same to be at the same yearly rent, payable in the like manner, and under and subject to the like covenants, provisos, and agreements (except a covenant for renewal thereof at the end of such further term), as are contained in these presents, such new lease however to be granted and to be valid only on condition that the said *Thomas Carr*, his executors, administrators, or assigns, do execute a counterpart thereof, and also pay unto the said *James Fenwick*, his executors, administrators, or assigns, the sum of twenty pounds of lawful money of Great Britain, at the time of executing the said lease, as a premium for the renewal thereof. AND ALSO that if the said *Thomas Carr*, his executors, administrators, and assigns, shall be desirous to quit the said messuage and premises hereby demised at the end of the first seven or the first fourteen years of the term of twenty-one years hereby granted, thereof, and of such his or their desire shall give notice in writing to the said *James Fenwick*, his executors, administrators, or assigns, six calendar months before the expiration of the said first seven or fourteen years (as the case may be),

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then and in such case (all arrears of rent being duly paid, and the said messuage and all other the premises hereby demised, being in such repair as they are herein before covenanted to be maintained in and left), this lease and every clause and thing herein contained shall at the expiration of such first seven or first fourteen years of the said term of twenty one years hereby granted, (whichever in the said notice be expressed) determine and be utterly void to all intents and purposes, in like manner as if the whole term of twenty-one years had run out and expired, any thing in these presents contained to the contrary thereof notwithstanding. In witness whereof the said parties have hereunto set their hands and seals the day and year first above-written.

James Fenwick. (Seal.)  
Thomas Carr. (Seal.)

Sealed and delivered in the presence of

William Teers, of Gray's Inn.

Thomas Sykes, Clerk to Mr. Teers.

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2. *Lease of Messuage and Lands in the Country from Tenant for Life, under a Marriage Settlement (a).*

THIS INDENTURE made the twenty-fourth day of March, in the Thirty-second year of our Sovereign Lord George the Third, by the Grace of God of Great Britain, France, and Ireland, King, Defender of the Faith, &c. and in the year of our Lord Christ, one thousand seven hundred and ninety-two, BETWEEEN Mary Plumber, of (widow of Parties, Christopher Plumber, late of the same place, Esq. deceased,) of the one part, and Charles Clay, of Gent. of the other part, WITNESSETH that the said Mary Plumber, by virtue of a power to her in that behalf, given in and by certain indentures of lease and release, dated respectively on or about the twenty-fourth and twenty-fifth day of June, in the year one thousand seven hundred and seventy-two, (being the settlement made on her marriage with the said Christopher Plumber, deceased,) and for and in consideration of the rents, covenants, and agreements, herein after reserved and contained on the part of the said Charles Clay, his executors, administrators, and assigns, to be paid and performed, HATH demised, leased, and to farm let unto the said Charles Clay, his executors, administrators, and assigns, ALL that

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(a) This must be written on a six shilling Deed stamp.

## Parcels.

messuage or tenement and farm called the Grange Farm, with the yard, barns, stables, buildings, out-houses and appurtenances thereunto belonging, and also all those several fields, closes, and parcels of arable, meadow and pasture land thereunto belonging, and herein after particularly described (that is to say), ALL that

## Exception of timber.

piece or parcel of pasture-ground called the *Spring Close*, containing by estimation seven acres, be the same more or less, &c. &c. together with all ways, commons, waters, profits, and advantages whatsoever, to the said messuage or tenement, farm and premises, belonging or appertaining, EXCEPT and always reserved out of these presents unto the said *Mary Plumber*, and her assigns, during such part of the term hereby demised, as she shall live, and from and after her decease, unto such person or persons as shall from thenceforth, during the remainder of the said term, be entitled to the freehold and inheritance of the said premises, all timber and other trees now standing and being, or which shall at any time, during the continuance of this demise, stand or be upon the said demised-premises (other than such as are hereinafter agreed to be allowed the said *Charles Clay*, his executors, administrators, and assigns, for boot), with free liberty of ingress, egress, and regres, for the said *Mary Plumber*, and her assigns, or such other person or persons as shall be entitled as aforesaid, her and their agents and workmen, with horses, carriages, and otherwise, to and from any part of the said hereby demised premises, to cut down and carry away the said trees, making reasonable satisfaction unto the said *Charles Clay*, his executors, administrators, or assigns, for any damage he or they may sustain thereby, and also free liberty at all times to view the state of the trees upon the said premises.

## Habendum for twenty-one years.

TO HAVE AND TO HOLD the said messuage or tenement, farm, lands, and premises hereby demised or mentioned so to be, unto the said *Charles Clay*, his executors, administrators, and assigns, from the fifth day of April last past, for and during the term of twenty-one years, from thence next ensuing, and fully to be complete and ended. He the said *Charles Clay*, his executors, administrators, and assigns, YIELDING AND PAYING for such tenor and occupation of the said premises, unto the said *Mary Plumber*, and her assigns, or unto such other person or persons as may be entitled as aforesaid, the yearly rent or sum of one hundred pounds of lawful money of Great Britain, the same to be paid by equal quarterly payments on the several days following: namely, on the twenty-fifth day of March, the twenty-fourth day of June, the twenty-ninth day of September, and the twenty-fifth day of December, in every year, by equal portions, the first quarterly payment thereof to begin and be made on the twenty-fourth day of June next ensuing the date of these presents. AND ALSO YIELDING AND PAYING by like equal portions on the several days aforesaid, an additional yearly rent or sum of five pounds of like lawful money for every acre, and proportion-

## Penalty for ploughing pasture.

ably

ably for any greater or less quantity than an acre of the pasture or meadow ground hereby demised, which at any time during the continuance of this demise shall be ploughed up or converted into tillage, without the consent in writing of the said *Mary Plumber*, or of such other person or persons as shall be entitled as aforesaid, first obtained for that purpose. AND the said *Charles Clay*, for himself, his heirs, executors, administrators, and assigns, doth hereby covenant, promise, and agree to and with the said *Mary Plumber*, her executors, administrators, and assigns, and also to and with the person and persons who shall be entitled to the freehold and inheritance of the premises hereby demised, from and after her decease for the then residue of the term hereby granted his, her, and their heirs, executors, administrators, and assigns, in manner following: that is to say, that he the said *Charles Clay*, his executors, administrators, and assigns, shall and will well and truly pay, or cause to be paid, unto the said *Mary Plumber*, or her assigns, during such part of the said term hereby demised as she shall live, and after her decease unto such person or persons as may then be entitled to the said premises as aforesaid, his, her, or their executors, administrators, or assigns, the said yearly rent or sum of one hundred pounds of lawful money of Great Britain, and also all other the rent and rents, sum and sums of money, herein before reserved, on the days herein before appointed for payment thereof, as the same shall from time to time grow due; the said rents or sums to be clear of all manner of deductions whatsoever, for or on account of any taxes, rates, assessments, or other impositions. AND further that he the said *Charles Clay*, his executors, administrators, or assigns, shall and will, at his and their own proper costs and charges, at all times during the continuance of this demise, maintain and keep the said messuage or tenement, outhouses, and buildings hereby demised, and the walls, hedges, fences, gates, stiles, bridges, and inclosures thereunto belonging, in good and sufficient repair in all respects, damages happening by casual fire only excepted, he and they being allowed rough timber on the stem, bricks, tiles, and lime for the doing thereof; and shall and will, at the end or other sooner determination of the said term, peaceably and quietly leave and yield up the same premises unto the said *Mary Plumber*, or her assigns, or unto such other person or persons as shall then be entitled thereto, in such good and sufficient repair as aforesaid. And further that it shall be lawful for the said *Mary Plumber*, and her assigns, during such part of the said term hereby demised as she shall live, and after her decease, for such person or persons as shall then be entitled as aforesaid, with workmen or otherwise, twice in every year during the said term, at seasonsable times in the day time, to enter into and upon the said premises hereby demised, and every part thereof, there to view and examine the state and condition thereof, notice of such review being at all times previously given.

Covenant  
from lessor to  
pay the rent.

Covenant from  
lessee to repair,  
materials being  
allowed by lessor.

Covenant from  
lessee that it shall  
be lawful for lessor  
to view state  
of repairs.

given unto the said *Charles Clay*, his executors, administrators, and assigns, one day at least before the same shall take place; and in case of any decays or want of reparation being found at any such review, the said *Charles Clay*, for himself, his executors, administrators, and assigns, doth hereby covenant, promise, and agree to and with the said *Mary Plumber*, and her assigns, and to and with such other person or persons as may be entitled to the said premises after her decease, his, her, and their heirs and assigns, to cause the same to be well and sufficiently repaired and amended within the space of six months after notice in writing shall be given to him or them for that purpose, rough timber, bricks, tiles, and lime, being allowed him and them for the doing thereof as aforesaid. AND

**Covenant from lessee that he will use hay, &c. on premises, and spread the dung thereon, except last year of term.**

AND FURTHER THAT he the said *Charles Clay*, his executors, administrators, and assigns, shall and will at all times during the continuance of this demise, spread and bestow in an husband-like manner upon the lands and grounds hereby demised, all the compost and dung which shall from time to time be made on the said premises, by fodder of cattle or otherwise, exceptonly such compost or dung as shall be made in the last year of this demise, which the said *Charles Clay*, his executors, administrators, and assigns, shall leave upon the said premises for the said *Mary Plumber*, or her assigns, or such other person or persons as aforesaid, without being allowed any thing for the same.

**Covenant from lessee that he will manage the ground in an husband-like manner.**

AND FURTHER THAT he the said *Charles Clay*, his executors, administrators, and assigns, shall not nor will at any time during this demise, sow or crop any of the arable land hereby demised, with any grain or seed except clover, more than two succeſſive years together, without permitting the same to have a summer's fallow; nor shall nor will cross crop any of the said arable lands during the said term; nor mow any of the pasture ground hereby demised more than once in any one year of the said term; but shall and will during this demise, plow, sow, manure, and manage all the lands and grounds hereby demised in a due and regular course of husbandry, according to the custom of the neighbouring country. AND further that he the said *Charles Clay*, his executors, administrators, or assigns, shall not nor will at any time during the continuance of this demise, do, or cause or voluntarily suffer to be done, any manner of waste or destruction in or upon any part of the premises hereby demised; but shall and will at all times during the said term preserva from the browse of cattle, and other avoidable injury all the young trees and underwood growing upon any part of the hereby demised premises.

**Covenant from lessee that he will lay down part of the lands with clover in the last year of term.**

AND further that he the said *Charles Clay*, his executors, administrators, or assigns, shall and will in the summer immediately preceding the expiration of the term hereby granted, prepare in an husband-like manner twenty acres of such part of the arable land hereby demised, as shall be then in course of fallow, fit to be sown with a crop the ensuing season, and also lay down with clover seed and rye grass ten acres more of the arable land hereby demised, which

shall be then in tillage, sowing upon each acre thereof eight pounds of the best clover seed, and two bushels of the best rye grass seed.

And moreover that he the said *Charles Clay*, his executors, administrators, and assigns, shall and will permit, and it shall be lawful for the said *Mary Plumber*, or her assigns, if living, and for such other person or persons as shall be entitled as aforesaid, in case of her decease, his, her, or their assigns, from and after the first day of February next preceding the determination of this demise, with servants, horses, and implements of husbandry, to enter upon such

Covenant from lessor that he will permit lessor's assignee to enter at Candlemas before the end of term to cultivate.

closes and grounds of the said hereby demised premises as shall then be in the course of fallow, and plough, till, and manure the same for the ensuing crop, without hindrance or molestation; and also for that purpose to take and have the dung and compost which

shall then be in the yard or yards belonging to the said demised premises. PROVIDED ALWAYS, and these presents are upon this condition nevertheless, that if the said rents above reserved, or any of them, or any part thereof, shall be in arrear and unpaid for the space of twenty one days next after either of the said days

Proviso of re-entry in case of non-payment of rent, &c.

whereon the same are appointed to be paid as aforesaid (the same being lawfully demanded); or if the said *Charles Clay*, his executors, administrators, or assigns, shall not well and truly observe and perform all and every the covenants and agreements in these presents contained, on his and their parts to be observed and performed, then and from thenceforth, in either of the said cases, it shall be lawful for the said *Mary Plumber*, and her assigns, if living, and in case of her decease, for the person or persons who shall be entitled to the freehold and inheritance of the said premises hereby demised, to re-enter into the same premises, or into any part thereof, in the name of the whole, and the same to have again, retain, and enjoy, as his, her, or their former estate: and the said *Charles Clay*, his executors, administrators, and assigns, and all other tenants and occupiers of the said premises, thereout and from thence utterly to expel and remove; and from and after such re-entry made, this lease and every thing herein contained shall determine and be utterly void to all intents and purposes, any thing in these presents contained to the contrary thereof notwithstanding.

AND the Covenants from said *Mary Plumber* for herself, her executors, administrators, and lessor.

assigns, doth covenant, promise, and agree to and with the said *Charles Clay*, his executors, administrators, and assigns, in manner following; (that is to say) that she the said *Mary Plumber*, or her assigns, during such part of the term hereby granted, as she shall live, and from and after her decease, such person and persons as shall from thenceforth be entitled to the freehold and inheritance of the said demised premises, for the remainder of the said term, shall and will, as often as there shall be occasion during this demise, find and allow unto the said *Charles Clay*, his executors, administrators, and assigns, either upon the said premises, or within three miles distance therefrom, rough timber on the stem, bricks, tiles, and lime for the necessary

Covenant from lessor to provide materials for repairs.

cessary repairs of the said messuage or tenement, outhouses, buildings, and premises hereby demised, with the gates, stiles, pales, rails and fences belonging thereunto, the said materials to be carried to the places where the same are to be used at the charge of the said *Charles Clay*, his executors, administrators, and assigns.

Covenant that  
lessee may plash  
the hedges.

AND ALSO that it shall be lawful for the said *Charles Clay*, his executors, administrators, and assigns, during the continuance of this demise, at seasonable times in the year, to cut and plash, in a husband-like manner, the quick hedges belonging to the said demised premises, saving and preserving all such young trees therein as may be likely to become timber, and likewise to lop the pollard trees growing upon the premises hereby demised, (so that the said hedges, and the said pollard trees respectively, be not plashed and lopped oftener than once in every year) and employ the wood which shall be got from such trees and hedges, to his and their own use, provided the said *Charles Clay*, his executors, administrators, and assigns, shall well and sufficiently make up again such hedges, as often as the same shall be plashed, and clear out the ditches belonging thereto, or otherwise fence in and preserve the same from

Covenant that  
lessee may sell  
straw if he bring  
compost in the  
room.

AND ALSO that he the said *Charles Clay*, his executors, administrators, and assigns, shall at any time during this demise, except only in the last year thereof, have liberty to sell and dispose of any quantity of hay and straw arising from the said premises, on his and their spreading upon such parts of the same premises as shall stand in most need of compost, one good load of rotten dung for every load of hay or straw that shall be carried off the premises. AND ALSO that the said *Charles Clay*, his executors, administrators, and assigns, paying the rents hereinbefore reserved, and performing the covenants and agreements herein before contained, on his and their parts to be paid and performed, shall and lawfully may peaceably and quietly hold and enjoy the said messuage or tenement, and other the premises hereby demised with their appurtenances, during the term hereby granted, without hindrance or interruption by the said *Mary Plumber*, or her assigns, or any other person lawfully claiming from or under her, them, or any of them. PROVIDED ALWAYS, and it shall moreover be lawful for the said *C. Clay*, his executors, administrators, or assigns, to determine and make void this present lease at the expiration of the first seven or fourteen years of the said term of twenty one years hereby granted, on his or their causing notice in writing of such his or their intention to be given to or left for the said *Mary Plumber*, or her assigns, if then living, and in case of her decease, to and for such other person and persons as shall then be entitled as aforesaid, at his, her, or their usual place of abode, six calendar months at least before the time mentioned in such notice for determining the same, any thing herein before contained to the contrary thereof in any wise notwithstanding. In witness, &c.

Covenant for  
peaceable enjoy-  
ment.

Proviso empow-  
ering lessee to  
determine lease.

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3. *An Indorsement for continuing the Term of an expiring Lease (a).*

THIS INDENTURE made the fifth day of December in the thir-ty-second year of the reign of our sovereign lord George the Third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, &c. and in the year of our Lord Christ one thousand seven hundred and ninety-two, BETWEEN the within named *John Felton*, of the one part, and the within *Parties*, named *Peter Thomas* of the other part, WITNESSETH, that in consideration of the rent hereby reserved, and of the covenants, conditions, and agreements herein contained on the part of the said *Peter Thomas*, his executors, administrators, and assigns, to be paid and performed, the said *John Felton* doth demise and lease unto the said *Peter Thomas*, his executors, administrators, and assigns, ALL that piece or parcel of ground with the messuage or tenement thereon erected, and all and singular other the premises comprised in the within written lease, and thereby demised, TO HAVE AND TO HOLD the *Habendum*, said piece or parcel of ground and messuage, or tenement, and all and singular other the premises hereby and by the within written lease demised and leased, or mentioned so to be, unto the said *Peter Thomas*, his executors, administrators, and assigns, from the twenty-fourth day of *June*, which will be in the year of our lord one thousand seven hundred and ninety-three, and when the said within written lease will expire, for and during, and unto the full end and term of four years thence next ensuing, subject to and under the like rent as in the within written lease is referred, and payable in like manner as therein is mentioned, and subject also to the like power of re-entry as well on the non-payment of rent, as on the happening of any other of the incidents mentioned in the proviso for re-entry within written. And it is hereby declared and agreed by and between the parties to these presents, that they and their respective executors, administrators, and assigns, shall and will, during the continuance of the additional term of four years hereby granted, stand and be bound by such, and the like covenants, proviso, and agreements as they, their respective executors, administrators, and assigns, are now bound by the within written lease, in respect of the said premises thereby and hereby granted, it being the intent and meaning of the parties hereto, that this indorsed lease, and the additional term hereby granted, shall be upon such and the like footing as the lease within written, and that all the covenants, conditions, and agreements

(a) This requires a six shilling Deed stamp notwithstanding the stamp on the lease.

contained in the within written lease be equally available, and have the like force and effect to all intents and purposes, as if the same and every thing in the said lease contained were again repeated and inserted in these presents. *In witness, &c.*

Sealed and delivered in the presence of *John Felton* (Seal.)  
*Peter Thomas* (Seal.)  
*Charles Bleu*, } of *Tunbridge, Kent.*  
*John Simms*, }

4. *A Covenant to be inserted in a Lease to indemnify the Tenant against Accidents by Fire.*

AND LASTLY, it is covenanted and agreed by and between the said parties to these presents, that the said (*tenant*), his executors, administrators, and assigns, shall not by virtue hereof, or of any thing herein contained, be chargeable with any damage which shall or may be occasioned during the term hereby demised, by accidental fire, and that accidents by fire are wholly excepted out of the covenant herein before mentioned, for keeping and leaving the said premises in repair, and the said (*tenant*), his executors, administrators, and assigns, is not, nor shall be construed to be by colour of any clause in these presents contained, liable to make good any such accidents or damage occasioned thereby, but the same shall be repaired and made good, or, if necessary, the premises be rebuilt, as soon as may be after the happening of such fire, at the expence and charge of the said (*landlord*), his heirs, or assigns, any thing in these presents contained to the contrary in any wise notwithstanding.

5. A Covenant from Lessee that he will insure the Premises from Fire, and rebuild them if burnt.

AND that he the said (*tenant*) his executors, administrators, and assigns, shall and will at his and their own proper costs and charges, from time to time, during the continuance, and until the expiration of the term hereby granted, cause to be well and sufficiently insured, in some or one of the public offices, kept in the cities of London or Westminster, for the purpose of insuring houses from casualties by fire, all and every the messuages or tenements, erections, and buildings which shall be erected and built upon the said piece or parcel of ground hereby demised, or upon any part thereof, in the full sum of five hundred pounds of lawful money of Great Britain; and in case the said messuages or tenements, erections and buildings, or any of them, or any part of them, shall

shall at any time or times during the said term be destroyed or damaged by fire, shall and will, as often as the same may happen, and as soon as may be thereafter, cause the same to be rebuilt or repaired, as occasion may require, in a good and substantial manner.

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6. *Covenant that Lessee will not assign the Premises to any offensive Trade.*

AND ALSO, That he the said (*lessee*), his executors, administrators, and assigns, shall not, nor will at any time during the continuance of the said term hereby granted, assign or set over the present indenture of lease, or fet, let, or assign any part of the mesuage and premises hereby demised, unto either of the trades or businesses following, that is to say, the trade or busines of a Sedan chairmaker, Butcher, Baker, Currier, Soap-boiler, Brewer, Distiller, Tallow-chandler, Tallow-melter, Sugar-baker, working Brazier, Tinman, Plumber, Tripe-boiler, Tripe-seller, Dyer, Founder, Smith, Pipe-maker, Pipe-borer, or any other noxious or offensive busines whatsoever, without the consent in writing of the said (*landlord*), his executors, administrators, or assigns first obtained for that purpose, nor shall nor will, without such consent as aforesaid, cause to be made any addition or alteration whatever, in or about the said mesuage or tenement and premises, or any part thereof.

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No. III. *ASSIGNMENTS.*

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1. *An Assignment of leasehold Premises, from a Mortgagee to a Purchaser (a).*

**T**HIS INDENTURE made the      day of      in the thirty-fourth year of the reign of our sovereign Lord George the Third, by the Grace of God, of Great Britain, France, and Ireland, king, defender of the Faith, and so forth, and in the year of our Lord one thousand seven hundred and ninety-four, BETWEEN William Johnson, (the mortgagee), of &c. of the first part, and Joseph King, (the mortgagor), of &c. of the second part, and Jeremiah Goodright, (the purchaser) of &c. of the third part. WHEREAS (here was recited the lease by which the mort-

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(a) To be engrossed on a six shilling Deed stamp.

gagor held the mortgage deed and bond for securing the sum of five hundred pounds, formerly lent on the premises now assigned), AND WHEREAS the said sum of five hundred pounds was not paid at the time appointed by the said recited indenture, for payment thereof, whereby the estate of the said *William Johnson* in the said mortgaged premises became absolute in law, AND WHEREAS there is now due to the said *William Johnson* for principal and interest on the said recited bond and mortgage the sum of five hundred and fifty pounds, AND WHEREAS the said *Jeremiah Goodright* hath contracted with the said *Joseph King* for the absolute purchase of the said mortgaged premises for all the residue now to come of the said term of ninety-nine years, granted by the said recited indenture of lease, at the price or sum of seven hundred pounds. NOW THIS INDENTURE WITNESSETH that for and in consideration of the said sum of five hundred and fifty pounds of lawful money of *Great Britain*, in hand, at or before the sealing of these presents, well and truly paid by the said *Jeremiah Goodright* to the said *William Johnson*, (by the direction of the said *Joseph King*, testified by his sealing and delivering hereof), which said sum of five hundred and fifty pounds is in full of all principal and interest money due to the said *William Johnson* on the said recited bond and mortgage, and the receipt of which said sum the said *William Johnson* doth hereby acknowledge, and therefrom discharge the said *Jeremiah Goodright*, and also the said *Joseph King*, their and each of their executors, administrators, and assigns, by these presents, HE the said *William Johnson*, by and with the consent, direction, and appointment of the said *Joseph King*, testified as aforesaid, HATH granted, bargained, sold, assigned, transferred, and set over, and by these presents DOTH grant, bargain, sell, assign, transfer, and set over, unto the said *Jeremiah Goodright*, his executors, administrators, and assigns, the said recited indentures of lease and release, and the said recited bond, and also the mesuage or tenement, and all and singular other the hereditaments and premises, with their respective appurtenants in and by the same indentures of lease and release demised and conveyed as aforesaid, or mentioned so to be, and all the estate, right, title, interest, property, term of years, unexpired claim and demand whatsoever, of him the said *William Johnson*, of, in, and to the same premises, by virtue of the said recited indentures, or otherwise, TO HAVE AND TO HOLD the said recited indenture of lease, and indenture of assignment; and also the said piece or parcel of ground, and the mesuage or tenement thereon built, and all and singular other the premises hereby assigned, with the appurtenants hereby granted, sold, and assigned, or mentioned so to be, unto the said *Jeremiah Goodright*, his executors, administrators, and assigns, from the day of the date of these presents, for and during all the residue now to come of the said term of ninety-nine years, by the said recited indenture of lease granted. AND the said *William Johnson* for himself, his heirs, executors,

Assignment  
from mort-  
gagor.

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tors, and administrators, doth covenant, promise, and agree to Covenant from and with the said *Jeremiab Goodright*, his executors, administrators, and assigns, by these presents, that he the said *William Johnson*, hath not done, or caused to be done, or knowingly suffered any act or thing whatsoever, whereby the said recited indenture of lease is, or shall, or can be made void, or the said piece or parcel of ground, messuage, or tenement, and premises hereby assigned, or any of them, are or shall, or can be charged or incumbered in title, estate, or otherwise. AND THIS INDENTURE Assignment FURTHER WITNESSETH that for and in consideration of the further sum of one hundred and fifty pounds of lawful money of *Great Britain*, to the said *Joseph King*, in hand also, well and truly paid by the said *Jeremiab Goodright*, at or before the sealing and delivery of these presents therewith, whereof the said *Joseph King* doth hereby acknowledge and therefrom doth release and discharge the said *Jeremiab Goodright*, his executors, administrators, and assigns, (which said sums of five hundred and fifty pounds by the said *Jeremiab Goodright* to the said *William Johnson* as aforesaid, and the one hundred and fifty pounds by him now paid to the said *Joseph King*, making together the sum of seven hundred pounds, are in full of the purchase money agreed to be paid by the said *Jeremiab Goodright* for the said premises,) he the said *Joseph King* hath granted, bargained, sold, released, and confirmed, and by these presents doth grant, bargain, sell, release, and confirm unto the said *Jeremiab Goodright*, his executors, administrators, and assigns, the said recited indenture of lease made and granted to him the said *Joseph King*, as aforesaid, and the said piece or parcel of ground, and all and singular other the premises with the appurtenances in the same indenture demised, and all the estate, right, title, interest, profit, property, term of years now to come, equity of redemption, claim and demand whatsoever, of him the said *Joseph King*, both in law and equity, or otherwise, of, in, and to the said lease and premises, or any part thereof, and all deeds, evidences, and writings touching and concerning the said hereby demised premises, or any part thereof, now in the custody or power of the said *Joseph King*, or of any other person, for his use, or in trust for him, TO HAVE AND TO HOLD the said recited indenture of lease, and the said piece or parcel of ground, messuage, or tenement thereon built, and all and singular other the premises with the appurtenances herein before mentioned and expressed to be hereby granted and assigned as aforesaid, unto the said *Jeremiab Goodright*, his executors, administrators, and assigns, from henceforth for and during all the residue now to come of the said term of ninety-nine years, and the said *Joseph King* for himself, his heirs, executors, and administrators doth covenant, promise, and agree to and with the said *Jeremiab Goodright*, his executors, administrators, and assigns, by these presents, in the manner following, (that is to say)

Covenant  
from mortgagor that lease is valid.

Covenant for  
quiet enjoy-  
ment.

Covenant for  
further as-  
surance.

Covenant  
from assignee  
to pay rent and  
perform cove-  
nants of lease.

say) that the said recited indenture of lease made and granted to him the said Joseph King as aforesaid, is at the time of the sealing and delivering of these presents, a good and valid lease, and that the term of years thereby demised is now in being, and in no wise forfeited, surrendered, or any wise encumbered, (save as aforesaid) and that they, the said Joseph King and William Johnson have in themselves, or one of them hath in himself, good, right, and absolute authority to grant, bargain, sell, assign, transfer, and set over the premises meant and expressed to be hereby assigned, with their appurtenants, unto the said Jeremiah Goodright, his executors, administrators, and assigns, in manner aforesaid, AND that he the said Jeremiah Goodright, his executors, administrators, or assigns, shall, or lawfully may, for and during all the remainder now to come of the said term of ninety-nine years, by the said recited indenture of lease granted, peaceably have, hold, occupy and enjoy all and singular the premises hereby granted and assigned, or mentioned so to be, with their appurtenances, without any suit, molestation, or interruption of them the said Joseph King and William Johnson, or either of them, their or either of their executors, administrators, or assigns, or of any other person lawfully claiming from them or any of them, and that free and clear of all former and other grants, assignments, mortgages, surrenders, and other assurances and incumbrances whatsoever, made or knowingly suffered to be made by the said Joseph King and William Johnson, or either of them, or which shall or may be made by their or either of their executors, administrators, or assigns. AND FURTHER that he the said Joseph King, his executors and administrators, and all and every other person or persons lawfully claiming from or under him or them, shall and will at all times hereafter (a) during the remainder now to come of the said term of ninety-nine years, at the request, costs, and charges in the law of the said Jeremiah Goodright, his executors, administrators, and assigns, make, do, and execute, or cause to be made, done, and executed, all such further lawful and reasonable acts and deeds in the law whatsoever, for the better and more effectually conveying, assigning, and assuring the said hereby assigned premises unto the said Jeremiah Goodright, his executors, administrators, and assigns, for all the remainder of the said term of ninety-nine years, which shall be then to come and unexpired, as the said Jeremiah Goodright, his executors, administrators, or assigns, shall reasonably require. AND LASTLY, the said Jeremiah Goodright, for himself, his executors, administrators, and assigns, doth covenant, promise, and agree to and with the said

(a) It has been held in these words, that the covenantor shall nevertheless have reasonable time to make further assurance. 1 Roll. Abr. 441.

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*Joseph King*, his executors and administrators, that he the said *Jeremiah Goodright*, his executors, administrators, and assigns, some or one of them shall and will from time to time during the remainder now to come of the said term of ninety-nine years, pay the said yearly rent of forty-pounds by the said recited indenture of lease reserved, at such time and in such manner as by the said indenture the same is reserved and made payable, and shall and will perform and observe all and every the covenants and agreements therein contained, which on the tenant's part are to be kept and performed. And also shall and will at all times save and indemnify, and save harmless the said *Joseph King*, his executors and administrators, from all suits, damages, and expences whatsoever, which he or they may sustain or be put unto, by reason of the non-payment of the said yearly rent, or non-performance of any of the covenants in the said recited indenture of lease reserved and contained. In witness whereof the said parties have hereunto set their hands and seals the day and year first within written.

*William Johnson.* (Seal.)

*Joseph King.* (Seal.)

*Jeremiah Goodright.* (Seal.)

Sealed and delivered in the presence of

*Henry Caxton, Three Pump Court, Temple.*

*Thomas Wills*, his Clerk.

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2. *Assignment of Lease and Premises by Indorsement (a.)*

TO ALL TO WHOM THESE PRESENTS SHALL COME, the within named *William Naile* sendeth greeting. WHEREAS the within named *William Naile* for the considerations hereinafter mentioned, hath agreed to assign over unto *Josiah James*, now or late servant to *Elizabeth Long*, of *Saville Row*, in the county of *Middlesex*, Widow, his executors, administrators, and assigns, the within mentioned messuage, or tenement and premises. NOW these presents WITNESS, that in pursuance of the said agreement, and for and in consideration of the sum of five pounds of lawful money of Great Britain to the said *William Naile* in hand paid by the said *Josiah James*, at or before the sealing and delivery of these presents, the receipt whereof is

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(a) This will require a six shilling stamp besides the stamp on the lease.—An assignment is equally valid by indorsement, as if made by a separate deed; and an indorsement is so far preferable, as that it prevents the necessity of repeating the rentals in the deed.

hereby

## Assignment.

hereby acknowledged, he the said *William Naile* hath granted, bargained, sold, assigned, transferred, and set over, and by these presents doth grant, bargain, sell, assign, transfer, and set over, unto the said *Josiah James*, his executors, administrators, and assigns, all that the messuage, tenement, and all and singular other the premises in and by the within written indenture of lease demised or mentioned, or intended so to be, with their and every of their appurtenances; and all the estate, right, title, interest, term of years to come and unexpired, property, claim and demand whatsoever, of the within named *William Naile*, of, in, to, or out of the same premises, every or any part thereof, together with the said indenture of lease. TO HAVE AND TO HOLD the said piece or parcel of ground, and all and singular other the premises hereby, or mentioned to be hereby assigned, with their and every of their appurtenances, unto the said *Josiah James*, his executors, administrators, and assigns, from the feast-day of St. Michael the Archangel now next ensuing the date hereof, for and during all the rest, residue, and remainder, which shall be then to come and unexpired, of the term of twenty-one years, in and by the within written indenture of lease granted thereof, (determinable nevertheless at the option of the said *Josiah James*, his executors, administrators, and assigns, at the end of the first seven or fourteen years of the term of twenty-one years within granted, upon the said *Josiah James*, his executors, administrators, or assigns, giving such notice to the said *William Naile*, his executors, administrators, or assigns, as the said *William Naile* is required to give in and by the within written indenture), subject nevertheless to the payment of the rent and performance of the covenants in the same indenture of lease reserved and contained on the tenant or lessee's part, from thenceforth to be paid, done, and performed; and the said *William Naile*, doth hereby for himself, his heirs, executors, and administrators, covenant promise, and agree, to and with the said *Josiah James*, his executors, administrators, and assigns, in manner following; (that is to say) that he the said *Josiah James*, his executors, administrators, or assigns, paying the rent, and observing and performing the covenants and agreements reserved and contained in and by the said within written indenture of lease, on the tenant or lessee's part, to be paid and performed, from and after the said feast of St. Michael the Archangel now last past, shall and may from time to time, and at all times thereafter, for and during all the residue and remainder which shall be then to come and unexpired of the said term of twenty-one years (determinable as aforesaid), by the within written indenture of lease granted, lawfully, peaceably, and quietly have, hold, occupy, possess, and enjoy the said piece or parcel of messuage and premises hereby assigned, or intended so to be, with their and every of their appurtenances, and receive and take the rents, issues, and profits thereof, and of

Covenant for  
quiet enjoy-  
ment.

of every part thereof, to and for his and their own use and benefit, without any lawful let, vert, trouble, denial, eviction, or interruption of or by the said *William Naile*, his executors, administrators, or assigns, or any other person or persons whomsoever, lawfully claiming or to claim, by, from, or under him them, or any of them, or by or through him or their acts, means, neglect, default, or procurement; AND that free and clear, freely and clearly acquitted and discharged, or otherwise, by the said *William Naile*, his executors, or administrators, well and sufficiently kept harmless, and indemnified of, from, and against all and all manner of former and other deeds, gifts, <sup>Free from in-</sup> grants, bargains, sales, assignments, mortgages, surrenders, re-<sup>cumbrances.</sup> entries, judgments, executions, extents, statutes, recognizances, and all other incumbrances whatsoever; AND of and from all arrears of rent, taxes, and assessments, until the said feast-day of St. Michael the Archangel next ensuing. AND FURTHER <sup>Covenant for further assu-</sup> <sup>rance.</sup> that he the said *William Naile*, his executors or administrators, and all and every other person and persons having, or lawfully claiming, or to claim any estate, right, title or interest, of, in, to, or out of the said hereby assigned premises, or any part thereof, from, by, under, or in trust, either for the within named *William Naile*, his or any of his executors or administrators, shall and will from time to time, and at all times during the continuance of the said term hereby assigned, upon every reasonable request, and at the costs and charges in the law of him the said *Josiah James*, his executors, administrators, or assigns, make, do and execute, or cause and procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law, for the further and better assuring the said premises unto the said *Josiah James*, his executors, administrators, and assigns, for the then residue of the term within demised, as by the said *Josiah James*, his executors, administrators, or assigns, or his or their counsel learned in the law, shall be reasonably devised and required.

IN WITNESS whereof the said parties have hereunto set their hands and seals, this eighth day of January, one thousand seven hundred and ninety-three.

Witness,  
*Thomas Butts.*

*William Naile. (Seal.)*  
*Josiah James. (Seal.)*

### 3. Assignment of a Policy of Insurance.

TO ALL TO WHOM THESE PRESENTS SHALL COME, *Johnson Pitts*, of *Shadwell*, in the county of *Middlesex*, Gent. (executor of the last will and testament of *Thomas*

(a) This must be written on a six shilling *Deed stamp.*

• *Baile,*

Baile, late of the same place, Esq. deceased), SENDS GREET-  
ING, WHEREAS by a certain deed poll, or policy of insurance,  
numbered forty thousand and five, bearing date the fifth day of  
July, in the year of our Lord one thousand seven hundred and  
eighty-nine, and executed by *James Bedwell* and *Richard White*, trustees or directors of a certain office for insuring  
buildings from fire, going by the name of the *Phœnix Fire  
Office*, a certain brick dwelling house, and other the premises  
therein described, situated on the north side of *Carey Street*, in the  
county of *Middlesex*, in the occupation of *Peter Davis*, are in-  
sured from loss by fire, from and after the sixth day of July  
then next, for and during the term of seven years from the  
said fifth day of July thence next ensuing. NOW KNOW  
YE, that the said *Johnson Pitts*, for and in consideration of  
the sum of fifty pounds to him in hand paid by the said *Peter  
Davis*, the receipt whereof is hereby acknowledged, HATH  
bargained, sold, assigned, transferred, and set over, AND by  
these presents DOTH bargain, sell, assign, transfer, and set  
over, unto the said *Peter Davis*, his executors, administrators,  
and assigns, the said recited deed poll, or policy of insurance,  
and all monies that shall or may become due thereon, and all  
benefit and advantage thereof, and all the right, title, and  
interest of him the said *Johnson Pitts*, in and to the same re-  
spectively. AND the said *Johnson Pitts* doth also hereby au-  
thorize and empower the said *Peter Davis*, his executors, ad-  
ministrators, and assigns, in his or their own name or names,  
and for his and their own proper use, or in the name of the  
said *Johnson Pitts*, his executors or administrators, but to and  
for the use of the said *Peter Davis*, his executors, administra-  
tors, and assigns, to receive from the trustees or directors for  
the time being of the said *Phœnix Fire Office*, all monies that  
shall or may become due on the said recited deed poll, or  
policy of insurance, and upon non-payment thereof, or of any  
part thereof, to sue for, recover, and receive the same, and to  
give receipts or other discharges for the same; and all and  
whatever the said *Peter Davis*, his executors, administrators, or  
assigns, shall lawfully do, or cause to be done, in and about  
the premises aforesaid, the said *Johnson Pitts* doth by these pre-  
sents confirm and allow as fully and effectually as if he himself  
were personally present, and did the same. In witness whereof  
the said *Johnson Pitts* hath hereunto set his hand and seal, this  
second day of January, one thousand seven hundred and ninety-  
four.

Witness.

*Samuel Paine.*

*Johnson Pitts (Seal.)*

4. *An Assignment, by Note in Writing, indorsed on the Back of the Lease (a).*

5th June, 1794. The within named *James Pounce* hath this day assigned and made over unto the undersigned *Thomas Williams*, of *Shadwell High-street*, in the county of *all* and singular the hereditaments and premisses in the within written lease described, and thereby granted, together with the whole of his estate and interest therein. As witness their hands now set hereto.

Witness,  
*Sykes Webb.*

*James Pounce.*  
*Thomas Williams.*

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N° IV. SURRENDERS.

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1. *The Form of a Surrender of a Lease, indorsed on the back thereof (b).*

**T**O ALL TO WHOM THESE PRESENTS SHALL COME, know ye that the within named *James Finch* hath surrendered and yielded up, and hereby doth surrender and yield up unto the within named *William Downing*, all and singular the within mentioned premises, and all the estate, term and interest of the said *James Finch* therein, together also with the within written indenture of lease, TO HOLD all and singular the same, premises of the said indenture of lease, unto the said *William Downing*, his heirs and assigns, to the use of the said *William Downing*, his heirs and assigns, for ever. In witness whereof the said parties have hereunto set their hands and seals, this second day of March, one thousand seven hundred and ninety-four.

Witness.  
*Wm. Muuns.*

*James Finch.*  
*William Downing.*

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(a) This needs no stamp.

(b) The surrender may be by a separate deed, or on the back of the leases; in either case, if it be under seal, it must be written on a 6s. Deed stamp, but if it be only by a mere note or memorandum, no stamp is requisite.

## 2. Another Form by way of Memorandum or Note in Writing (a).

Second of March, one thousand seven hundred and ninety-four. The within named *James Finch* hath this day surrendered unto the within named *William Downing*, the within lease, and all his interest therein. As witness their hands.

Witness,  
Tho. Moul.

James Finch.  
William Downing.

## 3. The Surrender of a Copyhold Estate to the use of a Purchaser (b).

Manor of Hampstead, in the county of Middlesex.

MEMORANDUM THAT on the twenty-fourth day of August, in the thirty-second year of the reign of our Sovereign Lord *George the Third*, &c. in the year of our Lord one thousand seven hundred and ninety-four, Sir *Gilbert Allan*, of *Rippon*, in the county of *York*, Knight, one of the customary tenants of the said manor, by *John Rich*, Gent. his attorney, (by virtue of a letter of attorney to him made by the said Sir *Gilbert Allan*, for that purpose, bearing date the fourth day of August instant,) did surrender into the hands of the lord of the said manor, by the rod, according to the custom of the same manor, by the proper hands and acceptance of *Robert Johnson*, Esq. lord of the said manor (c), ALL that, &c. to the use of *Sarah Dowse*, of, &c. widow, her heirs and assigns for ever, according to the custom of the said manor.

*Gilbert Allan.*

Taken the day and year first above written,  
by me  
*Robert Johnson*, lord of the said manor.

## The Admittance of the new Tenant.

The manor of Hampstead, in the county of Middlesex.

MEMORANDUM THAT after the making the surrender hereunto annexed, viz. on this twenty-ninth day of August, one thousand seven hundred and ninety-four, *Sarah Dowse*, in the same

(a) See note (b) supra.

(b) Surrenders and admissions of copyhold estates (except surrenders to the use of a will) must be engrossed on a 7s. stamp if the annual value thereof are of 20s. and 2s. 3d. stamp if under that value.

(c) It is more usual for the surrender to be taken by the steward, but it may be done by the lord himself.

surrender

surrender named, in her proper person, came before me *Robert Johnson*, Esq. lord of the laid manor, at the mansion house of the said *Sarah Dowse*, situated near *Hampstead* aforesaid, and desired to be admitted tenant to all and singular the customary messuages, lands, tenements, and hereditaments, mentioned and contained in the same surrender, with their and every of their appurtenances, to whom the lord of the said manor, by his own proper hands, in the presence of *Jeremiab Clark*, the lord's steward for this turn, did then and there grant seisin thereof by the rod, to have and to hold the same messuages, lands, tenements, and hereditaments, with their and every of their appurtenances, unto the said *Sarah Dowse*, her heirs and assigns for ever, of the lord, at the will of the lord, according to the custom of the said manor, by fealty suit of court, and the several yearly rents and services therefore due, and of right accustomed; and the said *Sarah Dowse* gave to the lord for fine, Fine three pounds six shillings and eight pence. for such her estate, and entry into the same premises respectively, as appears in the margin, the fealty was respited. And so saving to the lord his right, the said *Sarah* was admitted tenant to the said premises in manner and form aforesaid.

*Robert Johnson,*  
Lord of the said manor.

In the presence of *Jeremiab Clarke*.

*The Surrender of the said Sarah Dowse to the Use of her Will.*

MEMORANDUM THAT after the admission of the said *Sarah Dowse* as aforesaid, viz. on the said twenty-ninth day of August, in the year of our Lord one thousand seven hundred and ninety-four aforesaid, the said *Sarah Dowse* did surrender into the hands of the said lord of the said manor, by the rod, according to the custom of the said manor, by the proper hands and acceptance of the said lord of the said manor, all and every the customary messuages, lands, meadows, pastures, tenements, and hereditaments, to which she was admitted as above mentioned, with their and every of their appurtenances, and all other her customary and copyhold messuages, lands, tenements, and hereditaments, which are parcel of the said manor, or are held of the same manor, by copy of court-roll, to such uses, intents, and purposes, as the said *Sarah Dowse* shall in and by her last will and testament in writing, limit, declare, or appoint.

*Sarah Dowse.*

Taken the day and year above written,  
by me

*Robert Johnson*, lord of the said manor.

N<sup>o</sup> V. NOTICES TO QUIT (a).

## 1. Notice from Landlord to Tenant to quit House and Premises.

SIR,

I hereby give you notice to quit, on or before the twenty-fifth day of March next, the house and premises situated No. 6, Gower Street, Bedford Square, in the county of Middlesex, which you now hold of me at the rent of Sixty-pounds per annum. Dated this fourth day of January, one thousand seven hundred and ninety-three.

To Thomas Wilkes, Esq. Yours, &c.  
No. 6, Gower Street, Bedford Square. John Stiles,  
Landlord of the said house and premises.

## 2. Notice from Landlord to Tenant, either to quit Farm and Premises or pay double Rent.

SIR,

I hereby give you notice to quit and deliver up, on or before the fifth day of January now next, the house, farm, lands, and tenements, which you now hold of me, situate No. 10, Paddington Green, in the county of Middlesex, in default whereof I shall require for the same the net yearly rent or sum of eighty-pounds, (being double the present yearly rent thereof), for such time as you shall thereafter continue possession. Dated this fourth day of October, one thousand seven hundred and ninety-three.

To Mr. James Pie. Joseph Wilson.  
Landlord of the said premises.

## 3. Notice from Tenant to his Landlord to quit House and Premises.

SIR,

I hereby give you warning that I shall quit the house and premises I now hold of you, situated No. 25, Gerard Street, Soho Square, on Michaelmas Day next. Dated this first day of July, one thousand seven hundred and ninety-three.

To Mr. Peyton, Yours, &c.  
No. 10, Lyons Inn. Stephen Phillips.

(a) Notices to quit require no stamp.

*4. Notice from Landlord to Tenant, to quit Apartments.*

S I R,

I hereby give you notice to quit and deliver up, on or before the twenty-fifth day of December next, the apartments, and other tenements, you now hold of me in this house. Witness my hand this twentieth day of September, one thousand seven hundred and ninety-three.

*Miners Jones.**5. Notice from Tenant to Landlord, to quit Apartments.*

S I R,

Take notice, that on the twenty-fifth day of December next I shall quit and deliver up the apartments, and other tenements, I now hold of you in this house. Witness my hand this twentieth day of September, one thousand seven hundred and ninety-three.

*William Mills.*

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*N<sup>o</sup> VI. RECEIPTS FOR RENT.*

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**T**WENTY-NINTH day of March, one thousand seven hundred and ninety-four, received of Mr. *James Tyson*, the sum of fifteen pounds ten shillings, being half a year's rent due from him to me at Lady Day last.

<i>L.</i>	<i>s.</i>	<i>d.</i>	
15	10	0	---- Rent.
0	10	0	---- Land-tax.
<hr/>			<i>£.15</i> 0    0
<hr/>			---- Net sum.

*James Phillips.*

---

*£.15*    0    0

*When received for the Use of another it may be thus:*

Twenty-ninth day of March, one thousand seven hundred and ninety-four, received of Mr. *James Tyson*, the sum of fifteen pounds ten shillings, being one half year's rent due to *James Phillips*, of *Bedford Square, Esq;* for the house now occupied by the said *James Tyson*, No. 15, *Great Russell Street, Bloomsbury.*

<i>L.</i>	<i>s.</i>	<i>d.</i>	
15	10	0	---- Rent.
0	10	0	---- Land-tax.
<hr/>			<i>£.15</i> 0    0
<hr/>			---- Net sum.

*William Gill,  
No. 6, Clifford's Inn.*

N<sup>o</sup> VII. PRECEDENTS IN DISTRESS.

1. *The Form of an Authority given by a Landlord to empower another to distrain for him.*

Mr. William Jones,

I do hereby authorize you to distrain the goods and chattels of *Thomas Peters*, on the premises now in his possession, situate at *Islington*, in the county of *Middlesex*, for twenty pounds, being half a year's rent due to me for the same at *Lady Day* last, and for your so doing this shali be a sufficient warrant of authority. Dated this eighth day of April, one thousand seven hundred and ninety-four.

James Fraser.

2. *The Form of an Inventory and Notice to be served on a Tenant when Distress taken of his Goods, &c. for Rent arrear.*

An inventory of the several goods and chattels distrained by me *William Jones*, the tenth day of April, one thousand seven hundred and ninety-four, in the dwelling house (or otherwise as the case may be) of *Thomas Peters*, situated at *Islington*, in the county of *Middlesex*, by the authority and in the behalf of *James Fraser*, the landlord of the said premises, for twenty pounds, being half a year's rent due to him the said *James Fraser*, at *Lady Day* last.

*In the dwelling house.*

4 Bedsteads and bedding.  
12 Mahogany chairs.  
2 Dining tables.

*In the yard.*

5 Pigs.  
6 Hens, &c. &c.

*At the Bottom of this Inventory must be written the following Notice to the Tenant.*

*Thomas Peters,*

Take notice that I have this day, by the authority and on the behalf of your landlord, *James Fraser*, Esq. distrained, on the premises above-mentioned, the several goods and chattels mentioned in the above inventory, for the sum therein expressed, which goods and chattels are removed to No. 10, *High-Street*, and there safely

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seven hun-  
sworn app-  
*Timothy T*  
and chatte-  
their judg-

Witness  
*John Lann*  
*Michael M*

safely impounded; and unless you pay the said sum, with the charge of distraining for the same, within the space of five days from the date hereof, the said goods and chattels will be appraised and sold, according to the statute in that behalf made and provided.

*William Jones.*

*The Person who serves the above on the Tenant should sign a Memorandum on a Copy thereof, purporting that he has done so, and the Day when.*

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3. *The Form of a Tenant's Consent to the Landlord's continuing in Possession upon the Premises, of Goods distrained, after the seventh Day.*

I Thomas Peters do hereby consent that James Fraser, my landlord, who on the tenth day of April last distrained my goods and chattels for rent due to him, shall continue possession thereof on the premises for the space of seven days from the date hereof, the said James Fraser undertaking to delay the sale of the said goods and chattels for that time, in order to enable me to discharge the said rent. Witness my hand this seventeenth day of April, one thousand seven hundred and ninety-four.

*Thomas Peters.*

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4. *The Form of a Memorandum of Oath being administered to Appraisers of Distress, to be indorsed on an Inventory of the Goods.*

Be it remembered that on this day of April, one thousand seven hundred and ninety-four, Joseph Pinks and Stephen Lyons, two sworn appraisers, were sworn upon the Holy Evangelists by me Timothy Thomas, constable, well and truly to appraise the goods and chattels mentioned in this inventory, according to the best of their judgment.

Witness,  
John Lann,  
Michael Moses.

*Timothy Thomas.*

5. *The*

5. *The Form of a Memorandum of an Appraisement of Goods distrained, to be indorsed on the Inventory thereof.*

We the above-named *Joseph Pinks* and *Stephen Lyons*, being sworn on the Holy Evangelists by the above named *Timothy Thomas*, well and truly to appraise the goods and chattels mentioned in this inventory, according to the best of our judgment, and having viewed the said goods and chattels, do appraise and value the same at the sum of thirty pounds, as witness our hands this day of April, one thousand seven hundred and ninety-four.

*Joseph Pinks.*  
*Stephen Lyons.*

Witness,  
*James Wills.*

6. *The form of a Replevin Bond (a).*

KNOW ALL MEN by these presents, that we *George Thomas*, of &c. and *Edward Piles*, of the same place, gent. are held and firmly bound unto *William George*, sheriff of the said county, in the sum of one hundred pounds, (*double the value of the goods distrained*), of lawful money of Great-Britain, to be paid to him the said *William George*, or his certain attorney, executors, administrators, or assigns, for which payment to be well and truly made we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally by these presents, dated this second day of June one thousand seven hundred and ninety-four.

Now the condition of this obligation is such, that if the above bounden *George Thomas* shall and do appear at the next county court to be holden for the county of *Esex*, at the town of on the twelfth day of October next hereafter, and there prosecute with effect his suit which he has commenced against *Frances Topworth*, for the taking and unjustly detaining three carts, one waggon, six horses, and two cows, the goods and chattels of him the said *George*, and shall and do make a return of the said goods and chattels, if a return of the same shall be adjudged, then this obligation shall be void and of none effect, but otherwise shall remain and be in full force and virtue. Sealed with our seals the day and year first above written.

*George Thomas.* (Seal.)  
*Edward Piles.* (Seal.)

Witness,  
*James Till.*

(a) To be written on a 6s. Deed stamp.



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